ONTARIO
LABOUR RELATIONS BOARD
REPORTS

March/April 2012

Ontario

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A Bimonthly Series of Decisions from the
Ontario Labour Relations Board

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EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

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ALAMO PLUMBING & DRAIN SPECIALISTS INC.; RE PLUMBERS RESIDENTIAL COUNCIL, ONTARIO 291

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TOM JONES & SONS LIMITED; TOM JONES CORPORATION AND TOM JONES CONSTRUCTION INC.; RE IBEW LOCAL 402; RE ATTORNEY GENERAL OF ONTARIO, LISGAR CONSTRUCTION CO., ET AL 391

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ZANETTE & ALMEIDA PLASTERING COMPANY LIMITED; RE IUPAT, LOCAL 1891 414

Construction Industry Grievance – Constitutional Law – The IBEW referred three grievances to the Board and at the same time challenged the validity of earlier legislation that effectively wiped out longstanding bargaining rights by legislative fiat – The Attorney General of Ontario brought a preliminary motion to have the grievances dismissed because the constitutional challenges were predicated on the impermissible retroactive application of a Supreme Court of Canada decision in 2007 (*Health Sciences*) to legislation that had been spent or repealed long before (in 2001) – The issue concerned the legislation creating province-wide bargaining (1978) and its subsequent "deemed abandonment" (2001) and whether the Board could ascribe the Charter right to collective bargaining to a time *before* the SCC had found such a right to exist – The union sought to argue that the legal fictions created by the legislation (or removed by it) necessarily made court-made changes to the law (i.e., the recognition of the right to collective bargaining) applicable to whatever consequences the fictions created – The Board rejected the union's arguments and upheld the AG's preliminary motion – Grievances dismissed

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Construction Industry Grievance – Practice and Procedure – When a first grievance was dismissed by the Board on the basis of a preliminary motion brought by the responding party (an improper filing contrary to earlier Minutes of Settlement that required the OPDC alone, or the OPDC *and* a Local to initiate a grievance against the responding party), LIUNA OPDC and Local 183 immediately launched a second grievance – The Board considered whether it should accept the grievance referral – The responding party asserted the grievance ought to be dismissed as an abuse of process or on the basis of the doctrine of *res judicata* because the two applicants had the opportunity to litigate the issues in dispute in the context of the first grievance – The applicants argued that the second grievance is properly before the Board because the parties had not been in agreement in their interpretation of the effect of the Minutes of Settlement; the Board in fact had to make that threshold ruling before the merits of the grievance could be addressed – Since the applicants lost the first grievance on a preliminary motion, the launching of the second grievance could not be said to violate the principles of judicial economy, finality and the integrity of the administration of justice – The Board held that the doctrine of *res judicata* was inapplicable to the circumstances of this proceeding; however the doctrine of abuse of process and the Board's discretion to accept a grievance referral led the Board to a different conclusion – The Board held that it ought not readily grant a party an opportunity to cooper up a deficient application in circumstances where the deficiency was one that could have been avoided with due care in the first place – Application dismissed

PNR RAILWORKS INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL WITH ITS AFFILIATED LOCAL UNION, UNIVERSAL WORKERS UNION, L.I.U.N.A. LOCAL 183 365

Delay – Construction Industry – Related Employer – The unions' bargaining rights were derived from collective agreements signed in 1977 in respect of a business that two partners, A and Z, ran – A left the business in 1982 and operated a new one, Quinte, continuously from then until these applications – After reviewing *KNK* and *Somerville* the Board determined that too much time had elapsed for there to be any protection of bargaining rights that arguably arose in 1982 in a scenario where the employer had operated openly and consistently since that time with what is now a significant workforce – Accordingly the Board determined that it would not exercise its discretion in favour of the unions – Application dismissed

ZANETTE & ALMEIDA PLASTERING COMPANY LIMITED; RE IUPAT, LOCAL 1891 414

Discharge – Employment Standards – Reprisal – The employee, who sold newspaper subscriptions door-to-door and was paid on a straight commission basis, applied for review of a refusal to issue an order for payment of minimum wage – She had signed a contract that described her as an independent contractor, and was terminated one day after she sought payment of minimum hourly wages – The employer asserted she was terminated for failure to produce adequate sales – The Board considered whether the worker was an independent contractor or an employee – The Board also looked at whether the commissioned salesperson exemption to minimum wage and vacation pay under section 2(1)(h) of Ont. Reg. 285/01 of the *Employment Standards Act, 2000* applied, or if the exception to the exemption for a "route salesperson" applied – It was also determined if a reprisal under section 74(1) of the *Act* had occurred in the circumstances – The worker was found to be an employee, not an independent contractor, because the employer exercised substantial control over her activities: the employee was picked up along with other "team members" each day and dropped off in an assigned neighbourhood; she was given a list of non-subscribers on particular streets in the neighbourhood to solicit; the list was collected by the employer at the end of the week; the employee was given a script of what to say to potential customers; she could not negotiate the percentage of commission she earned, and could not increase her ability to earn by doing work at times or in neighbourhoods other than determined by the employer – The Board also found the employee was a "route salesperson" and not a commissioned salesperson exempt from minimum hourly wage and vacation pay provisions of the *Act* – The Board also determined the employer had not discharged its onus under section 74 of the *Act* and a reprisal had occurred – The employer had terminated the employee's employment one day after her written request that she be paid minimum wage – In addition to minimum hourly wage pay and vacation pay, the Board awarded the employee two months of pay for the time it took her to find a new job, and one month of wages for loss of reasonable expectation of employment – Application allowed

P & L CORPORATION LTD. AND DIRECTOR OF EMPLOYMENT STANDARDS; RE DEENA SCHILLER 344

Duty Of Fair Representation – Remedies – A previous decision found the union had violated its duty of fair representation in arbitrarily dealing with the applicant's discharge grievance – The Board considered the appropriate remedy in light of an arbitrator's decision that determined the grievance at issue was not arbitrable because of the untimely reference to arbitration by the union – The employer argued that a referral to arbitration would be contrary to *Windsor Western* – The Board found however there had been no decision on the merits by the arbitrator (only a decision that he did not have jurisdiction to hear the grievance) – The Board, having found the reason the grievance was untimely was due to the union's breach of the duty of fair representation, determined that in order for the applicant to be restored to a position he would have been in but for the union's breach, the Board must be able to direct the grievance to be arbitrated on the merits – The Board ordered the intervenor to waive any objection to time limits and the union to take the grievance to arbitration for a determination on its merits – The Board denied the applicant's request to retain counsel of his choice to represent him at the union's expense at the arbitration hearing, finding the union's relationship with the applicant was not so strained that the arbitration could not proceed in the normal course – The Board remained seized to deal with the apportionment of any compensation awarded pursuant to the arbitration award between the union and the employer

TOBIAS HOUSE ATTENDANT CARE INC.; RE ANONYMOUS APPLICANT & CAW-CANADA, AND ITS LOCAL 40.. 382

Employment Standards – Discharge – Reprisal – The employee, who sold newspaper subscriptions door-to-door and was paid on a straight commission basis, applied for review of a refusal to issue an order for payment of minimum wage – She had signed a contract that described her as an independent contractor, and was terminated one day after she sought payment of minimum hourly wages – The employer asserted she was terminated for failure to produce adequate sales – The Board considered whether the worker was an independent contractor or an employee – The Board also looked at whether the commissioned salesperson exemption to minimum wage and vacation pay under section 2(1)(h) of Ont. Reg. 285/01 of the *Employment Standards Act, 2000* applied, or if the exception to the exemption for a "route salesperson" applied – It was also determined if a reprisal under section 74(1) of the *Act* had occurred in the circumstances – The worker was found to be an employee, not an independent contractor, because the employer exercised substantial control over her activities: the employee was picked up along with other "team members" each day and dropped off in an assigned neighbourhood; she was given a list of non-subscribers on particular streets in the neighbourhood to solicit; the list was collected by the employer at the end of the week; the employee was given a script of what to say to potential customers; she could not negotiate the percentage of commission she earned, and could not increase her ability to earn by doing work at times or in neighbourhoods other than determined by the employer – The Board also found the employee was a "route salesperson" and not a commissioned salesperson exempt from minimum hourly wage and vacation pay provisions of the *Act* – The Board also determined the employer had not discharged its onus under section 74 of the *Act* and a reprisal had occurred – The employer had terminated the employee's employment one day after her written request that she be paid minimum wage – In addition to minimum hourly wage pay and vacation pay, the Board awarded the employee two months of pay for the time it took her to find a new job, and one month of wages for loss of reasonable expectation of employment – Application allowed

P & L CORPORATION LTD. AND DIRECTOR OF EMPLOYMENT STANDARDS; RE DEENA SCHILLER.. 344

Employment Standards – Judicial Review – Remedies – Judicial review of Board decision ([2011] OLRB Rep. May/June 389) finding that criteria to exempt directors from liability for employee wages under s. 80(4) of the *Employment Standards Act, 2000* was to be read conjunctively and not disjunctively – The applicant was a director of a Nova Scotia corporation that carried on business in Ontario and had employees in Ontario – When the corporation went bankrupt, an Employment Standards Officer issued an Order to pay against the applicant director, as the corporation had no assets for distribution – On review the Board held that in light of the Act's remedial objectives, s. 80(4) must be read conjunctively in order to prevent employers from circumventing the Act by incorporating outside Ontario – The applicant argued this conclusion was contrary to courts' prior application of s. 80(4), which it submitted was binding on the Board – The Divisional Court held the standard of review was reasonableness in light of the Board's expertise under its home statute and without considering the effect of the prior court decisions, the Divisional Court found the Board's decision to be reasonable – With respect to the impact of the prior court decisions, the Divisional Court held that because the aspect of those decisions involving s. 80(4) was neither thorough nor focused on the issue of conjunctive versus disjunctive interpretation, the fact that the Board declined to follow those court decisions did not make what was a reasonable decision, otherwise unreasonable – This conclusion was bolstered by the Board's expertise interpreting its home statute – Judicial review dismissed

SANFORD PENSLER, A DIRECTOR OF KOREX DON VALLEY ULC; RE TED ADAMS AND OTHERS; COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 132, ONTARIO (MINISTRY OF LABOUR – DIRECTOR OF EMPLOYMENT STANDARDS) AND OLRB 424

Employment Standards – Remedies – City of Toronto's non-union compensation program provided for annual performance-based payments equal to 3% of earnings and market-rate COLA salary adjustments, both subject to City Council budgetary approval – City Council gave approval for the 2008 reporting year but cancelled the program for 2009 midway through the reporting year – The Employment Standards Officer found that because both lump-sum payments were linked to hour, production and efficiency, they were "wages" for the purposes of the Act, however issued an Order to Pay only for performance-based bonus earned in 2008 reporting year – Employees applied for review seeking payments from 2009 as well as COLA payment from 2008 – The Board held that City Council budgetary approval was an insurmountable pre-condition to entitlement for payments under the program – The Board declined to award payment or pro-rated payment for 2009 as, unlike in 2008, the absence of budgetary approval meant that employees' entitlement had not yet vested – The Board found no fundamental change to terms and conditions of employment as the City had given proper notice of the change to employees – The Board declined to award payments for COLA as a proper reading of the non-union compensation plan indicated that budgetary approval from City Council was also required – Although abstractly characterized as "wages" under the Act, the non-union compensation program payments did not become "outstanding wages" until entitlement had properly vested – Applications for review dismissed

CITY OF TORONTO AND DIRECTOR OF EMPLOYMENT STANDARDS, ET AL; RE RAMIN SARRAMI 295

Employment Standards – The employee sought an order for termination pay – The employer, Student Media, was in a contractual relationship with Campus Publications to solicit advertising for various university and college publications – Each company had its own employees, payroll, management, etc. – When the relationship between SM and CP soured and CP undertook to do its own solicitation work, SM gave notice to its employees and subsequently laid them off before the notice period had expired – SM argued that the two companies were related, or that there had been a sale of business from SM to CP when CP took over the contract sales, so the two companies, at the very least, were jointly liable for the termination pay – The Board found no evidence of association or relatedness between the companies, and no sale of anything more than assets (if at all) – Application allowed; termination pay ordered

PAUL TIMOTHY BAKER O/A STUDENT MEDIA SERVICES INC. AND DIRECTOR OF EMPLOYMENT STANDARDS; RE JENNIFER POLAK 351

First Contract Arbitration – Adjournment – Practice and Procedure – Termination – Unfair Labour Practice – Subsequent to the PRCO filing an application under s. 43 a decertification application was filed – The Board found that while s. 43(2) clearly establishes that it is the Legislature's intention that applications for first contract arbitration be determined expeditiously, the language was directory not mandatory – Furthermore, although nothing in the statute clearly states that subsection 43(2) is subject to subsection 43(23.1), it is the only reasonable interpretation that the language of that subsection can be given without reading it entirely out of the Act – Finally, the Board considered the words "dealing with or continuing to deal with" in s. 43(23.2) and found that ss 43(23.3) and 43(23.4), at the very least, establish that the Board cannot determine the outcome of an application for first contract arbitration until such time as the decertification application has been determined – Finally, the Board rejected PRCO's alternative request that the decertification and first contract arbitration applications be heard together – In the Board's view the section restricts the Board from proceeding with or dealing with the first contract arbitration which must mean that the Board is not to take any steps towards determining the outcome of the application for first contract arbitration until the decertification application has been dealt with – Matters continue

ALAMO PLUMBING & DRAIN SPECIALISTS INC.; RE PLUMBERS RESIDENTIAL COUNCIL, ONTARIO.. 291

Health and Safety – Settlement – An application was made by an employee pursuant to Section 50 of the *Occupational Health and Safety Act* – An oral agreement in principle was reached – The employee's counsel sent a letter to the Board requesting the scheduled hearing date be adjourned because an "agreement in principle" had been reached – However, the employee disagreed with some of the terms of the drafted settlement and did not sign the Minutes of Settlement – The employee retained new counsel and sought to have the matter re-listed – The employer argued that the matter had been settled – The employee submitted subsection 96(7) of the *Labour Relations Act* required a binding settlement agreement to be in writing and to be signed by the parties or their representatives – The Board found that section 50(3) of the OHSA gives the Board discretion to decline to inquire into a complaint – This discretion is not qualified by subsection 96(7) of the LRA, which provides an enforcement mechanism for settlements – The Board noted that even an oral settlement may result in the Board declining to inquire further into a complaint – The Board found the matter had been resolved by the parties, as confirmed by the letter sent to the Board by the original counsel for the employee – Counsel can bind a client to a settlement unless the client has limited his or her authority and the opposing side has knowledge of the limitation – There was no reason for the Board to look behind the settlement – The Board exercised its discretion not to inquire further into the complaint because it had been settled – Application denied

ESTÉE LAUDER COSMETICS LIMITED; RE WINSTON H. GREGORY..................... 330

Health and Safety – The issue under appeal was whether receptacle portion of a specific solar energy connector was a "convenience receptacle" within the meaning of an exemption to s. 182 of the Construction Regulations – If not, then only a certified electrician or apprentice could connect the connector – The inspector's order did not require an electrician to perform the task; the IBEW appealed – The IBEW argued that the regulatory history established that a "convenience receptacle" meant a standard 120 volt AC power source into which power tools were plugged. The solar energy connector was not a standard AC power outlet and did not have its characteristics - Among other things, it was not a power source but part of the process of wiring connections to create a power generating device – The Board rejected these arguments, holding that the exemption was not limited to plugging in "power tools" but included plugging in "electrical equipment" - There was nothing in the wording of the current exemption which restricted it to power sources - Convenience ordinarily connotes ease of use; a convenience receptacle is one that is designed to accept a plug cap without any further work in order to effect the connection - The hazards associated with such other work are thus avoided by the design of the plug and the receptacles themselves - The characteristics of a solar energy connector were such that, if anything, it was safer to use than a standard 120 volt power outlet – Accordingly, the specialized skills of an electrician were not required to make the connection - Appeal denied

GIL & SONS LIMITED AND FIL SAVOIA, REGIONAL DIRECTOR; RE IBEW LOCAL 530, FIRST SOLAR DEVELOPMENT (CANADA) INC. 336

Judicial Review – Employment Standards – Remedies – Judicial review of Board decision ([2011] OLRB Rep. May/June 389) finding that criteria to exempt directors from liability for employee wages under s. 80(4) of the *Employment Standards Act, 2000* was to be read conjunctively and not disjunctively – The applicant was a director of a Nova Scotia corporation that carried on business in Ontario and had employees in Ontario – When the corporation went bankrupt, an Employment Standards Officer issued an Order to pay against the applicant director, as the corporation had no assets for distribution – On review the Board held that in light of the Act's remedial objectives, s. 80(4) must be read conjunctively in order to prevent employers from circumventing the Act by incorporating outside Ontario – The applicant argued this conclusion was contrary to courts' prior application of s. 80(4), which it submitted was binding on the Board – The Divisional Court held the standard of review was reasonableness in light of the Board's expertise under its home statute and without considering the effect of the prior court decisions, the Divisional Court found the Board's decision to be reasonable – With respect to the impact of the prior court decisions, the Divisional Court held that because the aspect of those decisions involving s. 80(4) was neither thorough nor focused on the issue of conjunctive versus disjunctive interpretation, the fact that the Board declined to follow those court decisions did not make what was a reasonable decision, otherwise unreasonable – This conclusion was bolstered by the Board's expertise interpreting its home statute – Judicial review dismissed

SANFORD PENSLER, A DIRECTOR OF KOREX DON VALLEY ULC; RE TED ADAMS AND OTHERS; COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 132, ONTARIO (MINISTRY OF LABOUR – DIRECTOR OF EMPLOYMENT STANDARDS) AND OLRB 424

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Practice and Procedure – Construction Industry Grievance – When a first grievance was dismissed by the Board on the basis of a preliminary motion brought by the responding party (an improper filing contrary to earlier Minutes of Settlement that required the OPDC alone, or the OPDC *and* a Local to initiate a grievance against the responding party), LIUNA OPDC and Local 183 immediately launched a second grievance – The Board considered whether it should accept the grievance referral – The responding party asserted the grievance ought to be dismissed as an abuse of process or on the basis of the doctrine of *res judicata* because the two applicants had the opportunity to litigate the issues in dispute in the context of the first grievance – The applicants argued that the second grievance is properly before the Board because the parties had not been in agreement in their interpretation of the effect of the Minutes of Settlement; the Board in fact had to make that threshold ruling before the merits of the grievance could be addressed – Since the applicants lost the first grievance on a preliminary motion, the launching of the second grievance could not be said to violate the principles of judicial economy, finality and the integrity of the administration of justice – The Board held that the doctrine of *res judicata* was inapplicable to the circumstances of this proceeding; however the doctrine of abuse of process and the Board's discretion to accept a grievance referral led the Board to a different conclusion – The Board held that it ought not readily grant a party an opportunity to cooper up a deficient application in circumstances where the deficiency was one that could have been avoided with due care in the first place – Application dismissed

PNR RAILWORKS INC.; RE LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL WITH ITS AFFILIATED LOCAL UNION, UNIVERSAL WORKERS UNION, L.I.U.N.A. LOCAL 183 365

Related Employer – Construction Industry – Delay – The unions' bargaining rights were derived from collective agreements signed in 1977 in respect of a business that two partners, A and Z, ran – A left the business in 1982 and operated a new one, Quinte, continuously from then until these applications – After reviewing *KNK* and *Somerville* the Board determined that too much time had elapsed for there to be any protection of bargaining rights that arguably arose in 1982 in a scenario where the employer had operated openly and consistently since that time with what is now a significant workforce – Accordingly the Board determined that it would not exercise its discretion in favour of the unions – Application dismissed

ZANETTE & ALMEIDA PLASTERING COMPANY LIMITED; RE IUPAT, LOCAL 1891 414

Remedies – Duty Of Fair Representation – A previous decision found the union had violated its duty of fair representation in arbitrarily dealing with the applicant's discharge grievance – The Board considered the appropriate remedy in light of an arbitrator's decision that determined the grievance at issue was not arbitrable because of the untimely reference to arbitration by the union – The employer argued that a referral to arbitration would be contrary to *Windsor Western* – The Board found however there had been no decision on the merits by the arbitrator (only a decision that he did not have jurisdiction to hear the grievance) – The Board, having found the reason the grievance was untimely was due to the union's breach of the duty of fair representation, determined that in order for the applicant to be restored to a position he would have been in but for the union's breach, the Board must be able to direct the grievance to be arbitrated on the merits – The Board ordered the intervenor to waive any objection to time limits and the union to take the grievance to arbitration for a determination on its merits – The Board denied the applicant's request to retain counsel of his choice to represent him at the union's expense at the arbitration hearing, finding the union's relationship with the applicant was not so strained that the arbitration could not proceed in the normal course – The Board remained seized to deal with the apportionment of any compensation awarded pursuant to the arbitration award between the union and the employer

TOBIAS HOUSE ATTENDANT CARE INC.; RE ANONYMOUS APPLICANT & CAW-CANADA, AND ITS LOCAL 40.. 382

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CITY OF TORONTO AND DIRECTOR OF EMPLOYMENT STANDARDS, ET AL; RE RAMIN SARRAMI.. 295

Remedies – Employment Standards – Judicial Review – Judicial review of Board decision ([2011] OLRB Rep. May/June 389) finding that criteria to exempt directors from liability for employee wages under s. 80(4) of the *Employment Standards Act, 2000* was to be read conjunctively and not disjunctively – The applicant was a director of a Nova Scotia corporation that carried on business in Ontario and had employees in Ontario – When the corporation went bankrupt, an Employment Standards Officer issued an Order to pay against the applicant director, as the corporation had no assets for distribution – On review the Board held that in light of the Act's remedial objectives, s. 80(4) must be read conjunctively in order to prevent employers from circumventing the Act by incorporating outside Ontario – The applicant argued this conclusion was contrary to courts' prior application of s. 80(4), which it submitted was binding on the Board – The Divisional Court held the standard of review was reasonableness in light of the Board's expertise under its home statute and without considering the effect of the prior court decisions, the Divisional Court found the Board's decision to be reasonable – With respect to the impact of the prior court decisions, the Divisional Court held that because the aspect of those decisions involving s. 80(4) was neither thorough nor focused on the issue of conjunctive versus disjunctive interpretation, the fact that the Board declined to follow those court decisions did not make what was a reasonable decision, otherwise unreasonable – This conclusion was bolstered by the Board's expertise interpreting its home statute – Judicial review dismissed

SANFORD PENSLER, A DIRECTOR OF KOREX DON VALLEY ULC; RE TED ADAMS AND OTHERS; COMMUNICATION, ENERGY AND PAPERWORKERS UNION OF CANADA, LOCAL 132, ONTARIO (MINISTRY OF LABOUR – DIRECTOR OF EMPLOYMENT STANDARDS) AND OLRB 424

Reprisal – Employment Standards – Discharge – The employee, who sold newspaper subscriptions door-to-door and was paid on a straight commission basis, applied for review of a refusal to issue an order for payment of minimum wage – She had signed a contract that described her as an independent contractor, and was terminated one day after she sought payment of minimum hourly wages – The employer asserted she was terminated for failure to produce adequate sales – The Board considered whether the worker was an independent contractor or an employee – The Board also looked at whether the commissioned salesperson exemption to minimum wage and vacation pay under section 2(1)(h) of Ont. Reg. 285/01 of the *Employment Standards Act, 2000* applied, or if the exception to the exemption for a "route salesperson" applied – It was also determined if a reprisal under section 74(1) of the *Act* had occurred in the circumstances – The worker was found to be an employee, not an independent contractor, because the employer exercised substantial control over her activities: the employee was picked up along with other "team members" each day and dropped off in an assigned neighbourhood; she was given a list of non-subscribers on particular streets in the neighbourhood to solicit; the list was collected by the employer at the end of the week; the employee was given a script of what to say to potential customers; she could not negotiate the percentage of commission she earned, and could not increase her ability to earn by doing work at times or in neighbourhoods other than determined by the employer – The Board also found the employee was a "route salesperson" and not a commissioned salesperson exempt from minimum hourly wage and vacation pay provisions of the *Act* – The Board also determined the employer had not discharged its onus under section 74 of the *Act* and a reprisal had occurred – The employer had terminated the employee's employment one day after her written request that she be paid minimum wage – In addition to minimum hourly wage pay and vacation pay, the Board awarded the employee two months of pay for the time it took her to find a new job, and one month of wages for loss of reasonable expectation of employment – Application allowed

P & L CORPORATION LTD. AND DIRECTOR OF EMPLOYMENT STANDARDS; RE DEENA SCHILLER 344

Settlement – Health and Safety – An application was made by an employee pursuant to Section 50 of the *Occupational Health and Safety Act* – An oral agreement in principle was reached – The employee's counsel sent a letter to the Board requesting the scheduled hearing date be adjourned because an "agreement in principle" had been reached – However, the employee disagreed with some of the terms of the drafted settlement and did not sign the Minutes of Settlement – The employee retained new counsel and sought to have the matter re-listed – The employer argued that the matter had been settled – The employee submitted subsection 96(7) of the *Labour Relations Act* required a binding settlement agreement to be in writing and to be signed by the parties or their representatives – The Board found that section 50(3) of the OHSA gives the Board discretion to decline to inquire into a complaint – This discretion is not qualified by subsection 96(7) of the LRA, which provides an enforcement mechanism for settlements – The Board noted that even an oral settlement may result in the Board declining to inquire further into a complaint – The Board found the matter had been resolved by the parties, as confirmed by the letter sent to the Board by the original counsel for the employee – Counsel can bind a client to a settlement unless the client has limited his or her authority and the opposing side has knowledge of the limitation – There was no reason for the Board to look behind the settlement – The Board exercised its discretion not to inquire further into the complaint because it had been settled – Application denied

ESTÉE LAUDER COSMETICS LIMITED; RE WINSTON H. GREGORY 330

Termination – Adjournment – First Contract Arbitration – Practice and Procedure – Unfair Labour Practice – Subsequent to the PRCO filing an application under s. 43 a decertification application was filed – The Board found that while s. 43(2) clearly establishes that it is the Legislature's intention that applications for first contract arbitration be determined expeditiously, the language was directory not mandatory – Furthermore, although nothing in the statute clearly states that subsection 43(2) is subject to subsection 43(23.1), it is the only reasonable interpretation that the language of that subsection can be given without reading it entirely out of the Act – Finally, the Board considered the words "dealing with or continuing to deal with" in s. 43(23.2) and found that ss 43(23.3) and 43(23.4), at the very least, establish that the Board cannot determine the outcome of an application for first contract arbitration until such time as the decertification application has been determined – Finally, the Board rejected PRCO's alternative request that the decertification and first contract arbitration applications be heard together – In the Board's view the section restricts the Board from proceeding with or dealing with the first contract arbitration which must mean that the Board is not to take any steps towards determining the outcome of the application for first contract arbitration until the decertification application has been dealt with – Matters continue

ALAMO PLUMBING & DRAIN SPECIALISTS INC.; RE PLUMBERS RESIDENTIAL COUNCIL, ONTARIO 291

Unfair Labour Practice – Adjournment – First Contract Arbitration – Practice and Procedure – Termination – Subsequent to the PRCO filing an application under s. 43 a decertification application was filed – The Board found that while s. 43(2) clearly establishes that it is the Legislature's intention that applications for first contract arbitration be determined expeditiously, the language was directory not mandatory – Furthermore, although nothing in the statute clearly states that subsection 43(2) is subject to subsection 43(23.1), it is the only reasonable interpretation that the language of that subsection can be given without reading it entirely out of the Act – Finally, the Board considered the words "dealing with or continuing to deal with" in s. 43(23.2) and found that ss 43(23.3) and 43(23.4), at the very least, establish that the Board cannot determine the outcome of an application for first contract arbitration until such time as the decertification application has been determined – Finally, the Board rejected PRCO's alternative request that the decertification and first contract arbitration applications be heard together – In the Board's view the section restricts the Board from proceeding with or dealing with the first contract arbitration which must mean that the Board is not to take any steps towards determining the outcome of the application for first contract arbitration until the decertification application has been dealt with – Matters continue

ALAMO PLUMBING & DRAIN SPECIALISTS INC.; RE PLUMBERS RESIDENTIAL COUNCIL, ONTARIO 291

Unfair Labour Practice – Five former executive members of LIUNA Local 183 sought relief from the Board following their ouster from office after a closely-fought election – The roster of incumbents was defeated, and the newly-elected executive expelled the five from membership and discharged another fifty Local 183 employees – A recount and internal review of the election process was conducted, with no findings of impropriety –

The Board reviewed the long and storied history of Local 183's relationship with its parent, the factional disputes, court actions and earlier Board proceedings that document much of the events which underlay the present complaints – The Board gave consideration to the responding parties' motions for dismissal, including issue estoppel, abuse of process, timeliness and Board discretion – The Board acknowledged that while there was an arguable case for a finding of a breach of the Act, having regard to the parties' history, and the nature and utility of the remedy sought by the applicants (including the prospect of resurrecting much of the earlier litigation between the parties), there would be little labour relations purpose served by proceeding with the complaints to completion, especially when the relief sought would become unavailable before the litigation was completed – Application dismissed

DURVAL TERCEIRA, JAIME MELO, MICHAEL O'BRIEN, GAETANO STRAZZANTI AND CESAR DANIEL AVERO; RE LIUNA, UNIVERSAL WORKERS UNION – LIUNA, LOCAL 183; RONALD A. PINK, Q.C. 302

3994-11-FC; 3995-11-U; 0971-10-U; 0040-12-R Plumbers Residential Council, Ontario, Applicant v. **Alamo Plumbing & Drain Specialists Inc.**, Responding Party; Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada and Plumbers Residential Council, Ontario, Applicant v. Alamo Plumbing & Drain Specialists Inc. and Marcello Alaimo, Responding Parties; Rick Fazari, Applicant v. Plumbers Residential Council, Ontario, Responding Party v. Alamo Plumbing & Drain Specialists Inc., Intervenor.

Adjournment – First Contract Arbitration – Practice and Procedure – Termination – Unfair Labour Practice – Subsequent to the PRCO filing an application under s. 43 a decertification application was filed – The Board found that while s. 43(2) clearly establishes that it is the Legislature's intention that applications for first contract arbitration be determined expeditiously, the language was directory not mandatory – Furthermore, although nothing in the statute clearly states that subsection 43(2) is subject to subsection 43(23.1), it is the only reasonable interpretation that the language of that subsection can be given without reading it entirely out of the Act – Finally, the Board considered the words "dealing with or continuing to deal with" in s. 43(23.2) and found that ss 43(23.3) and 43(23.4), at the very least, establish that the Board cannot determine the outcome of an application for first contract arbitration until such time as the decertification application has been determined – Finally, the Board rejected PRCO's alternative request that the decertification and first contract arbitration applications be heard together – In the Board's view the section restricts the Board from proceeding with or dealing with the first contract arbitration which must mean that the Board is not to take any steps towards determining the outcome of the application for first contract arbitration until the decertification application has been dealt with – Matters continue

BEFORE: *Diane L. Gee*, Alternate Chair.

APPEARANCES: *Craig Flood, Michael Hancock* and *Mark Ellerker* appearing for Plumbers Residential Council, Ontario; *Andrew Reynolds* and *Marcello Alaimo* appearing for Alamo Plumbing & Drain Specialists Inc.

DECISION OF THE BOARD: April 16, 2012

1. Board File No. 3994-11-FC is an application under section 43 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") seeking to have the Board direct the settlement of a first collective agreement by arbitration ("application for first contract arbitration"). The application was filed with the Board on March 20, 2012 and scheduled to be heard on April 10, 2012.

2. After the filing of the application for first contract arbitration, but before the hearing was held, an application seeking to decertify the Plumbers Residential Council, Ontario (the "PRCO") was filed with the Board. The decertification application has been assigned Board File No. 0040-12-R.

3. Having regard to the filing of the decertification application and subsection 43(23.1) of the Act, Alamo Plumbing & Drain Specialists Inc. ("Alamo") asked that the application for first contract arbitration be adjourned pending the outcome of the decertification application. The request was opposed by PRCO. Given that the application for first contract arbitration was listed to be heard the day following Alamo's request for an adjournment, the Board (differently constituted) directed that the adjournment request would be dealt with at the hearing.

4. The relevant portions of section 43 of the Act are as follows:

> **First Agreement Arbitration**
>
> 43 (1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration. 1995, c. 1, Sched. A, s. 43 (1).
>
> **Duty of Board**
>
> (2) The Board shall consider and make its decision on an application under subsection (1) within 30 days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where, irrespective of whether section 17 has been contravened, it appears to the Board that the process of collective bargaining has been unsuccessful because of,
>
> - (a) the refusal of the employer to recognize the bargaining authority of the trade union;
> - (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
> - (c) the failure of the respondent to make reasonable or expeditious efforts to conclude a collective agreement; or
> - (d) any other reason the Board considers relevant. 1995, c. 1, Sched. A, s. 43 (2).

- . . .

Definitions

> (23) In subsections (23.1) to (23.4),
>
> "decertification application" means an application for a declaration that a trade union no longer represents the employees in a bargaining unit;
>
> "displacement application" means an application for certification by a trade union, other than the trade union that represents the employees in a bargaining unit, as bargaining agent for those employees. 2000, c. 38, s. 5
>
> **Application of subs. (23.2)**
>
> (23.1) subsection (23.2) applies if,
>
> - (a) a decertification application or displacement application has been filed with the Board and before a final decision is made on it an application under subsection (1) is filed with the Board; or
> - (b) an application under subsection (1) has been filed with the Board and before a final decision is made on it a decertification application or displacement application is filed with the Board. 2000, c. 38, s. 5.

> **Procedure in dealing with multiple applications**
>
> (23.2) The Board shall proceed to deal with the decertification application or displacement application, as the case may be, before dealing with or continuing to deal with the application under subsection (1). 2000, c. 38, s. 5.
>
> **When application under subsection (1) to be dismissed**
>
> (23.3) If the Board grants the decertification application or displacement application, it shall dismiss the application under subsection (1). 2000, c. 38, s. 5.
>
> **When application under subs. (1) proceeds**
>
> (23.4) If the Board dismisses the decertification application or displacement application, it shall proceed to deal with the application under subsection (1). 2000, c. 38, s. 5.

5. Alamo argues that subsection 43(23) requires the Board to determine the outcome of the decertification application before proceeding with the application for first contract arbitration.

6. PRCO argues that subsection 43(2), in which the Board is directed to issue a decision in connection with the application for first contract arbitration within 30 days of receiving the application, applies notwithstanding subsection 43(23). PRCO argues that the need expedition in labour relations matters is well recognized by the Board and, in respect of subsection 43(2), expedition is legislatively mandated (see: *Del Equipment Limited* 1989 CanLII 3047 (ON LRB) and *Rainbow Concrete Industries Ltd.* 2010 CanLII 4341 (ON LRB)). PRCO argues that the Act does not provide that subsection 43(2) is subject to subsection 43(23) and further does not state what the outcome must be in the event of a conflict. PRCO submits that the language of subsection 43(2) mandating a decision within 30 days of the application is clear, whereas the language of subsection 43(23) is ambiguous as to its intent. PRCO submits that it is unclear what the words "deal with" in subsection 43(23) mean and the Board should interpret them in a manner that respects expedition of the application for first contract arbitration. PRCO argues that, if the Board were to adjourn the application for first contract arbitration pending the outcome of the decertification application, the Board would be ignoring the clear language of subsection 43(2) and its obligations thereunder.

7. In the alternative, PRCO asked that the application for first contract arbitration be listed for hearing together with the decertification application in order that any evidence heard in connection with the decertification application could be relied upon by the Board if and when it came to hear the application for first agreement arbitration. In support of this request, PRCO relies on *Delta-Rae Homes, a division of 1138319 Ontario Inc.*, [2005] O.L.R.D. No. 3156.

8. In response, Alamo points out that subsections 43(23.3) and (23.4) specify what the Board is to do with an application for first contract arbitration after a decertification application has been either granted or dismissed. According to subsection 43(23.3), if the decertification application is granted, the application for first contract arbitration is to be dismissed. According to subsection 43(23.4), if the decertification application is dismissed, the Board "shall proceed to deal with" the application for first contract arbitration. Alamo argues that, as a result of subsections 43(23.3) and (23.4) the Board must know the outcome of the decertification

application in order to know whether to dismiss the application for first contract arbitration or proceed with it. Alamo relies on *Ride Management Ltd.*, [2006] O.L.R.D. No. 2812 and *538203 Ontario Ltd. (c.o.b. Villa Construction)*, [2010] O.L.R.D. No. 331. Alamo does not agree that the matters should be listed for hearing together.

9. The language of subsection 43(2) clearly establishes that it is the Legislature's intention that applications for first contract arbitration be determined expeditiously. The language of subsection 43(2) is, however, directory and not mandatory (see: *Ming Pao Newspapers (Canada) Ltd.* 2011 CanLII 69446 (ON LRB)). In my view, while there is nothing in the statute that clearly states that subsection 43(2) is subject to subsection 43(23), such is the only reasonable interpretation that the language of subsection 43(23) can be given. To read it otherwise would be to read subsection 43(23) out of the Act (see: *Delta-Rae Homes, a division of 1138319 Ontario Inc.* [2005] O.L.R.D. No. 3156).

10. Subsection 43(23) directs the Board to "deal with" the decertification application before "dealing with or continuing to deal with" the application for first contract arbitration. To paraphrase, the Board is not to continue to "deal with" an application for first contract arbitration until it "deals with" the decertification application. The meaning of "deal with" is informed by subsections 43(23.3) and (23.4). As argued by Alamo, subsections 43(23.3) and (23.4) require the Board to know the outcome of the decertification application in order to know whether the application for first contract arbitration is to be dismissed or proceeded with. At the very least, subsections 43(23.3) and (23.4) establish that the Board cannot determine the outcome of an application for first contract arbitration until such time as the decertification application has been determined. Accordingly, it was my determination that the hearings in connection with the application for first contract arbitration could not proceed on April 10, 2012 as scheduled and I so orally ruled at the hearing.

11. That left, however, PRCO's request that the application for first contract arbitration and the decertification application be listed for hearing together. I reserved on this issue. The PRCO argues that "deal with" should be interpreted as meaning "determine" such that the Board could process the application for first contract arbitration and hold hearings, it simply could not issue its final decision.

12. It is my determination that "deal with", when read in the context of subsection 43(23) must mean that the Board is not to take any steps towards determining the application for first contract arbitration until the decertification application has been determined. First, subsection 43(23) provides that the Board cannot "deal with" or "continue to deal with" an application for first contract arbitration once a decertification application has been filed. The prohibition on the Board "continuing to deal with" an application suggests that whatever came before the point where the Board is directed to stop, which would not have included issuing a final decision in the matter, constituted "dealing with" the file. Second, subsection 43(23.3) provides that, if the decertification application is dismissed, the Board can "proceed with" the application for first contract arbitration. Such implies that, prior to the dismissal of the decertification application the Board has been restricted from "proceeding" with the application which is generally understood in Board parlance as meaning taking steps to hear as well as determine an application. Finally, it simply would not be logical to read the subsection as permitting the Board to process and hear

the application for first contract arbitration where, if the decertification is ultimately granted, the application for first contract arbitration is to be dismissed. In my view, "deal with" must mean that the Board is not to take steps (or any further steps) towards determining the outcome of the application for first contract arbitration.

13. Further, and in any event, the Board has recently instituted a process for dealing with applications for first contract arbitration that, in the majority of cases, will have all evidence adduced by way of sworn declarations and the hearing completed in a single day (see: *Ming Pao Newspapers (Canada) Ltd.* 2011 CanLII 69446 (ON LRB)). In light of this new process, it is highly likely that the application for first contract arbitration, if it proceeds, will be heard in a single day. As such, listing the application for first contract arbitration together with the decertification application would not result in the proceedings being finalized any faster.

14. For the reasons expressed above, it is my determination that Board File No. 3994-11-FC will not be listed together with Board File No. 0040-12-R.

15. PRCO has written to the Board and requested that Board File Nos. 0971-10-U and 3995-11-U be listed for hearing together with 0040-12-R. Alamo objects to the consolidation of the files and argues that 0971-10-U has been deemed terminated by the Board.

16. The Board hereby sets down for hearing Board File Nos. 0971-10-U and 3995-11-U to be heard together with Board File No. 0040-12-R already scheduled for May 7 and 8, 2012, commencing at 9:30 a.m. in the "Board Room", 2nd Floor, 505 University Avenue, Toronto, Ontario. The panel assigned will determine whether the matters ought to be heard together and, if necessary, whether 0971-10-U has been deemed terminated by the Board.

17. I am not seized.

1467-11-ES; 1468-11-ES; 1469-11-ES; 1470-11-ES Ramin Sarrami, Applicant v. **The City of Toronto** and Director of Employment Standards, Responding Parties; Bert Kingsley, Applicant v. The City of Toronto and Director of Employment Standards, Responding Parties; William Pritchard, Applicant v. The City of Toronto and Director of Employment Standards, Responding Parties; David Neil, Applicant v. The City of Toronto and Director of Employment Standards, Responding Parties.

Employment Standards – Remedies – City of Toronto's non-union compensation program provided for annual performance-based payments equal to 3% of earnings and market-rate COLA salary adjustments, both subject to City Council budgetary approval – City Council gave approval for the 2008 reporting year but cancelled the program for 2009 midway through the reporting year – The Employment Standards Officer found that because both lump-sum payments were linked to hour, production and efficiency, they were "wages" for the purposes of the Act, however issued an Order to Pay only for performance-based bonus earned in 2008 reporting year – Employees applied for review seeking payments from 2009 as well as COLA payment from 2008 – The Board held that City Council budgetary approval was an insurmountable pre-condition to entitlement for

payments under the program – The Board declined to award payment or pro-rated payment for 2009 as, unlike in 2008, the absence of budgetary approval meant that employees' entitlement had not yet vested – The Board found no fundamental change to terms and conditions of employment as the City had given proper notice of the change to employees – The Board declined to award payments for COLA as a proper reading of the non-union compensation plan indicated that budgetary approval from City Council was also required – Although abstractly characterized as "wages" under the Act, the non-union compensation program payments did not become "outstanding wages" until entitlement had properly vested – Applications for review dismissed

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *Ramin Sarami, Bert Kingsley, William Pritchard* and *David Neil* for the applicants; *Darragh Meagher* for the responding party employer; *Amyn Hadibhai* for the Director of Employment Standards.

DECISION OF THE BOARD: April 11, 2012

1. These are applications under s. 116(1) of the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the "Act") for review of an Order to Pay, which awarded eligible non-union employees of the responding party an annual pay for performance based bonus, in the form of a 3% re-earnable lump sum payment, for the 2008 compensation year but did not order certain other monies claimed by the applicants.

2. The Employment Standards Officer (the "ESO") issued the Order to Pay after finding that the re-earnable lump sum payments provided for in the City of Toronto Non-Union Compensation Program are wages pursuant to section 1 of the Act, and are owed to eligible non-union employees of the respondent.

3. The applicants, four of the twenty-three employees who initially filed claims against The City of Toronto, seek to review the ESO's Order on the basis that, in addition to the 3% lump sum performance pay earned in 2008, the applicants are entitled to (1) a re-earnable lump sum pay for performance increase for the period of January 1, 2009 to December 31, 2009 ("the 2009 compensation year"), and (2) a cost of living adjustment (COLA) increase similar to the negotiated increases provided to the City's unions in 2009 and 2010.

BACKGROUND

4. The applicants were non-union staff of the City of Toronto (the "employees") during the relevant period of employment from January 1, 2008 to December 31, 2009. They participate in the City's non-union pay for performance program under their contract of employment. The City's non-union compensation program consists of two components other than regular wages: the merit component provides eligible employees at the top of their respective position's job rates (i.e. those at the top of their salary grid) with a re-earnable lump sum payment equal to three percent (3%) of their annual salary, and the market-rate component provides for an annual general salary increase based on a cost of living adjustment (COLA), if

the employees meet or exceed their performance objectives during the relevant compensation year.

5. The pay for performance assessment is conducted annually and is based on the prior year's performance. For example, the 2008 performance-based assessment was conducted in early 2009 and was based on performance in the 2008 calendar year. All of the applicants performed at the required level to earn a bonus.

6. In 2004, City Council re-confirmed the existing performance pay model for non-union staff with one amendment: it adjusted the administration of the market rate component of the program such that it is based primarily on COLA and applied it as an across-the-board increase to ranges and salaries. Critically, it also required further Council approval, consistent with the practice for the union groups, with the exception of those employees who did not meet their objectives.

7. In 2006, the City revised the Pay for Performance Form by including the phrase "... performance pay increases are conditional upon and subject to Council approval as part of Council's budget deliberations". Similarly, in implementing the 2006 Performance Pay process, managers responsible for its application and all non-union staff were advised that "Once the budget is finalized and approved by Council, you will be advised when performance pay increases can be processed by the Pension, Payroll and Benefits Division".

8. Similar communications with non-union staff occurred with respect to the 2007 and 2008 Performance Pay processes.

9. The applicants' 2008 performance reviews were completed in early 2009 and new objectives were set for the 2009 reporting/compensation/calendar year by the applicants' immediate supervisors, managers and/or directors.

10. On March 31, 2009, City Council met and approved the 2009 operating budget, which included merit increases to a maximum of 3% and set aside contingency funds to cover an expected wage increase for all employees. The 2009 Operating Budget Submission, Guidelines and Instructions advised that salaries and benefits would be increased by the COLA percentage (if known), while non-salary services costs would be increased by 2%.

11. On April 29, 2009, City Council adopted a motion to amend the non-union compensation program which effectively cancelled the re-earnable lump sum performance pay for eligible employees who were at the top of their pay grade, and set the cost of living adjustment for 2009 and 2010 at 0% and 1% respectively. Council's decision was communicated to the supervisors/ mangers and/or directors of the non-union staff on May 7, 2009.

Decision of the ESO

12. The preliminary issue decided by the ESO was whether or not the re-earnable lump sum payments provided for in the City's non-union compensation program are "wages" pursuant

to s. 1, and payable under s. 11 of the Act. Having decided that the lump-sum payments constitute "wages" as defined under the Act, the ESO had to assess and determine the claimants' entitlement to those wages.

13. Based on the evidence before her, the ESO found that the City's 2009 Operating Budget included a pay for performance model that was both deliberated and approved on March 31, 2009 by City Council. She therefore determined that performance pay entitlements had vested and were owed to the applicants for the 2008 reporting period.

14. With respect to entitlement for the 2009 reporting year (payment due in 2010), the ESO found that the pay for performance would not be expected to vest until months into 2010. As the parties were in dispute by the fall of 2009 and knew full well that the lump sum payment would not vest, no entitlements were owed for the year 2009. Effectively, the ESO found that notice had been given as of May 7, 2009 that City Council had not approved the entitlements for those employees at the top of their salary range.

Position of the Applicants

15. The applicants make two arguments before the Board:

> (1) That the City's non-union compensation program contained a COLA component, and given that the applicants each met their performance objectives, they were also entitled to the COLA increases as were provided to the City's unions; and
>
> (2) That the ESO erred in holding that no consideration and/or entitlement should be given for the pay for performance 2009 reporting year.

It should be noted that following the ESO's Order, the respondent paid the applicants the 3% performance pay entitlements retroactive to January 1, 2008.

16. Further, it appears that COLA wage increases retroactive to January 1, 2008 were not affected by City Council's motion to cancel the re-earnable lump sum performance pay for eligible employees who were at the top of their pay grade, and the applicants received a 3.25% increase in 2008.

DECISION

Performance Pay for the 2009 Compensation Year

17. The Board agrees with the ESO's determination that entitlements under the City of Toronto Compensation Program/ Pay for Performance plan are "wages" within the meaning of the Act. Although the plan may rely on the employer's discretion to be implemented, it is

directly related to production and efficiency of the employees as entitlement vests in part after the employees meet certain performance objectives. It is not disputed in this case that the pay for performance plan is a term of the contract of employment of the non-union staff in gauging whether or not their salaries can increase.

18. With respect to the COLA component of the non-union compensation program, it is clear that effective September 2004, City Council approved and adopted, without amendment, the Recommendation of the Employee and Labour Relations Committee which linked the annual COLA of the non-union compensation program to performance. Specifically, Policy and Finance Committee Report 7, clause 33 (adopted by Council Sep. 28, 29, 30 & Oct. 1/04) states the following:

> It is recommended that:
>
> 1. the performance pay model for non-union staff, as approved by City Council February 2003 be re-confirmed with one adjustment to the administration of the plan, specifically:
>
>   a. re-confirm the merit component of the performance pay amount applicable to progression through the salary range and the re-earnable lump sum, at up to 3 percent (meet objectives – 3 percent, developmental – 1 percent, did not meet objectives – 0 percent) consistent with the model approved by Council, and
>
>   b. adjust the administration of the market rate component such that it is based primarily on COLA and applied as an across-the-board increase to ranges and salaries, and requiring further Council approval, consistent with the practice for the Union groups, **with the exception of those employees who did not meet their objectives**.

City Council's adaptation of the recommendation essentially served to make COLA increases also dependent on "hour, production and efficiency" of the employee, constituting 'wages' as opposed to 'bonuses' under the Act.

19. The real main issue in this case is whether entitlement had been vested in the applicants, having regard to the contingency clause which requires approval of City Council.

20. The Act allows for payment of wages to be contingent on certain terms having been met, as long as there is no contracting out or waiver of an employment standard (see *Fabrisol Holdings Ltd. (c.o.b. Ragfinder) (Re)*, [1996] B.C.E.S.T.D. No. 368 at para. 10; *595799 Ontario Ltd. (c.o.b. The Business Inn)*, [2006] O.E.S.A.D. No. 668 at para. 19). As stated above, the applicants were aware that performance pay increases were contingent on Council approval as part of Council's budget deliberation.

21. The 2009 Operating Budget included a pay for performance model that was both deliberated and approved by Council on March 31, 2009, which vested the performance pay entitlements retroactive to January 1, 2008. Once approved by City Council, the precondition for performance pay for eligible employees was satisfied and, as the ESO determined (which determination was not appealed), the City cannot rely on a subsequent motion to retroactively rescind Council's authorization.

22. With respect to entitlements retroactive to January 1, 2009 (payment due in 2010), however, there was no evidence before the Board to suggest Council approval of the pay for performance model as part of the 2010 Operating Budget. In fact, on April 29 and 30, 2009, City Council adopted the recommended amendment to the non-union compensation plan, which states in part, that the re-earnable performance-based lump-sum payments in 2010 for non-union employees who have reached their respective maximum salary are cancelled. As such, the precondition to eligible employees' entitlement for the 2009 compensation year was not met.

23. There are cases in which the Board has held that a payment which is conditional upon some event or circumstance is not due and payable, and therefore does not amount to outstanding wages, if the condition is not met. For example, in *Key Equipment Finance Canada Ltd.*, [2003] O.E.S.A.D. No. 927, the Board ruled that despite being 'wages' under the Act, an employee who had resigned in October 2002 was not entitled to the bonus because the applicant did not meet the express terms of the Incentive Compensation Plan. The fiscal year performance of the company was required before the Incentive Compensation Plan awards could be determined and individually quantified. With respect to entitlement to a pro rated portions of the 2002 bonus up to the date of the employee's resignation, the Board stated the following:

> 34. It is unclear to me how the applicant could be entitled to a prorated portion of the bonus up to the date of his resignation when the bonus can not be calculated or assessed until after the end of the fiscal year (or measurement period) on December 31, 2002. As stated in the plan document, "The plan is intended to reward Individual and GVS Business Unit performance" all of which are determined on an annual basis after the year-end. Section 3.5 is sufficiently clear when it states; " If you terminate employment prior to the end of a specified measurement and/or funding period, the incentive will not be considered "earned" for the purposes of section 3.5". An employee who leaves the company before the completion of the fiscal year can not be said to have "earned" the bonus under the terms of the Plan and hence does not qualify for payment of a bonus under section 3.5.

24. Accordingly, the condition placed on pay for performance entitlement for eligible non-union employees by the responding party is similar to conditions such as profitability of the operation, the employee's attendance, or not resigning prior to a specified date - all of which are instances where the Board has held that entitlement does not vest if the condition is not met.

25. It follows that the applicants are not entitled to the re-earnable lump-sum performance pay for the 2009 compensation year as the condition of City Council approval has not been met.

26. It was the applicants' submission that the notice given by the responding party regarding City Council's amendment to the program was not reasonable for the 2009 compensation year as they had already commenced working towards meeting their objectives for 2009 by the time they were notified of the amendments to the compensation program on May 7, 2009. However, it is trite law that an employer may unilaterally change a term of the contract of employment by providing reasonable notice to the employees. Accepting that notice was required as City Council's amendment amounted to a substantial change in the terms of the employment contract, notice was in fact provided by the responding party to the applicants. The remaining issue to be determined, then, is whether the notice was reasonable.

27. It is clear from the facts of this case that the only pre-condition to entitlements being vested for eligible employees is 'City Council approval as part of Council's budget deliberations'. There is no requirement that Council can only deliberate on and/or approve performance payments for the previous compensation year.

28. Effectively, City Council's early deliberation on the 2010 re-earnable lump-sum payments gave notice to the employees that the pre-condition for the 2009 compensation year will not be met. Had Council not approved any amendments to the entitlement for the 2009 compensation year in April of 2009 but waited until its 2010 budget deliberation session to announce the same, it is unlikely that similar arguments could be made with respect to notice requirements.

COLA Salary Increases for 2009 and 2010

29. With respect to COLA salary increases awarded to the applicants in 2009 and 2010, the Board cannot accept the applicants' argument that the responding party is obliged to award the same increases that are negotiated with the City's unions.

30. Although COLA increases can be 'wages' as discussed above, similar to the re-earnable lump-sum payments, these increases are contingent on City Council's approval. This is stated in the Policy and Finance Committee Report 7, clause 33, adopted by Council on September 28, 29, 30 and October 1, 2004, which re-confirmed the existing performance pay model for non-union staff. It must be noted that recommendation 1(b) in this Report, adopted by City Council and cited above in these reasons, makes no reference to the requirement to apply the same cost-of-living adjustment rate as those negotiated with the City's unions. Rather, it is only recommended and adopted that COLA increases require further Council approval, consistent with the practice of the Union groups, with the exception of those employees who did not meet their objectives.

31. On September 28, 29 and 30, 2005, City Council approved the cost-of-living salary adjustment for non-union staff consistent with the negotiated settlements reached with CUPE Locals 79 and 416 for the years, 2005 to 2008. Nevertheless, the Council-approved salary increase in 2008 for non-union employees was 0.75% less than Council's approved and ratified general wage increases for the unionized employees. Further, no reference was made at this time to the 2009 and 2010 rates of adjustment.

32. Therefore, the Board cannot conclude that City Council was required to approve a cost-of-living salary adjustment for 2009 and 2010 that were the same as the rates negotiated with the City's unions.

CONCLUSION

33. The applicants have failed to establish that their entitlement to the 2009 compensation year performance pay has been vested. Although constituting wages under the Act, the condition of Council's approval was not met. Therefore, no outstanding wages are owed to the applicants.

34. Similarly, there is no requirement that City Council approve COLA salary increases for the non-union employees in the exact rate as negotiated with the City's unions. Therefore, the applicants are not entitled to COLA increases beyond those approved by City Council for the 2009 and 2010 compensation years.

35. This application for review is dismissed, and the Order to Pay is upheld.

1475-11-U Durval Terceira, Jaime Melo, Michael O'Brien, Gaetano Strazzanti and Cesar Daniel Avero, Applicants v. Labourers International Union of North America, Universal Workers Union - Labourers' International Union of North America Local 183, Responding Parties v. Ronald A. Pink, Q.C., Intervenor.

Unfair Labour Practice – Five former executive members of LIUNA Local 183 sought relief from the Board following their ouster from office after a closely-fought election – The roster of incumbents was defeated, and the newly-elected executive expelled the five from membership and discharged another fifty Local 183 employees – A recount and internal review of the election process was conducted, with no findings of impropriety – The Board reviewed the long and storied history of Local 183's relationship with its parent, the factional disputes, court actions and earlier Board proceedings that document much of the events which underlay the present complaints – The Board gave consideration to the responding parties' motions for dismissal, including issue estoppel, abuse of process, timeliness and Board discretion – The Board acknowledged that while there was an arguable case for a finding of a breach of the Act, having regard to the parties' history, and the nature and utility of the remedy sought by the applicants (including the prospect of resurrecting much of the earlier litigation between the parties), there would be little labour relations purpose served by proceeding with the complaints to completion, especially when the relief sought would become unavailable before the litigation was completed – Application dismissed

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *Tim Gleason, Sean Dewart, Durval Terceira, Jaime Melo, Michael O'Brien* and *Daniel Avero* for the applicants; *James Robbins* for Labourers International Union of North America; *Ian Roland* and *Debra Newell* for Universal Workers Union – Labourers' International Union of North America Local 183; *Sean McGee* for Ronald A. Pink, Q.C.

DECISION OF THE BOARD: March 30, 2012

I. Introduction

1. This is an application filed with the Board pursuant to section 96 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended ("the Act") in which it is asserted that the responding parties violated sections 72, 76, 87 and 149 of the Act. This application was filed with the Board on July 29, 2011. It came on for hearing before me on December 19, 2011 in order to hear certain preliminary arguments brought by the responding parties. They assert that this application ought to be dismissed without a hearing on the merits.

II. Preliminary Motion Brought by the Applicants

2. At the outset of the hearing counsel for the applicants raised his own preliminary issue. Counsel stated that it had come to his attention that I had previously acted for one of his clients, Michael O'Brien, in a dispute that Mr. O'Brien had had with Universal Workers Union – Labourers' International Union of North America, Local 183 ("Local 183"). He indicated that the terms and conditions of Mr. O'Brien's former employment, including its inception and the calculation of his past service, was a remedial issue in this proceeding, and that because I had acted on behalf of Mr. O'Brien previously and likely had knowledge of Mr. O'Brien's past service, he was concerned that I was hearing this proceeding.

3. I indicated to counsel for all of the parties that I had, in fact, previously acted on behalf of Mr. O'Brien in an employment dispute that he had had with Local 183 and its third party benefits administrator, Benefit Plan Administrators. I indicated to counsel that to the best of my recollection I had acted for Mr. O'Brien approximately seven years earlier, and that the retainer had resulted in a statement of claim being issued on behalf of Mr. O'Brien. I also advised that the litigation had proceeded no further than the pleadings stage, and that the claim was in fact discontinued as a result of a settlement having been reached. I advised the parties that I had no present recollection of any of the terms of Mr. O'Brien's employment, at any time. I also noted for the benefit of Mr. Gleason that the applicants would have production of documents from the responding parties by the time that any remedial issues would arise in this proceeding.

4. Mr. Gleason then asserted that there was a potential for me to become a witness in this proceeding, and argued that there existed a reasonable apprehension of bias. After I prompted Mr. Gleason by asking him whether he was requesting that I recuse myself from this hearing, Mr. Gleason answered in the affirmative. He provided me with no case law in support of his motion. At that point I canvassed counsel for the other parties. Their clients took no position on the motion brought by the applicants.

5. I took a brief recess to consider the motion brought by the applicants. Upon my return I provided the parties with the following short decision:

> I have considered the request of counsel for the applicants that I recuse myself on the basis of a reasonable apprehension of bias. I am not prepared to do so. In my view, an informed person, viewing the matter realistically and practically, and having thought the matter through, would not think that there is any possibility of bias in the circumstances. Further reasons for this ruling may issue at a later date.

Counsel for the applicants indicated after I had given my ruling that he intended to seek a copy of Mr. O'Brien's file from my former law firm. He requested that I address the possibility that I may become a witness in this proceeding when I issued my further reasons. I advised him that I would. My reasons follow immediately below.

6. In my view, the motion brought by the applicants had no merit. Counsel for the applicants indicated during his brief submissions that there exists a question amongst the parties regarding the inception of Mr. O'Brien's employment with one or more of the responding parties and the calculation of his past service, and that I may have some factual knowledge in that regard. As noted above, I do not have any such knowledge. Moreover, if after the merits of this proceeding are adjudicated it were to be determined that Mr. O'Brien is entitled to compensation, it is not clear to me that any such compensation would be determined by reference to his length of service. The relief sought by the applicants, as set out in the application, discloses no claim for damages that is premised upon Mr. O'Brien's length of service. That said, if his length of service did, in fact, turn out to be of some significance, presumably Mr. O'Brien would testify to that issue at a hearing, supported, if necessary, by documentary disclosure on the part of Local 183. Mr. O'Brien was present at the hearing of this proceeding and appears available to testify.

7. Unlike Mr. O'Brien, I do not have any first hand knowledge of the circumstances surrounding Mr. O'Brien's employment with Local 183. Any information that I may have had previously regarding Mr. O'Brien's length of service with Local 183 would have been information given to me by Mr. O'Brien himself. Simply put, in the unlikely circumstance that the length of Mr. O'Brien's service and the terms of his employment with Local 183 many years ago should become relevant, those determinations are objective facts, easily established through the first hand testimony of Mr. O'Brien and a review of documentary material in the possession of Local 183. There was no suggestion by counsel for the applicants that I am in possession of confidential information from Mr. O'Brien that would negatively affect his interests or the interests of the other applicants in this proceeding.

8. For all of the above reasons, I dismissed the motion brought by the applicants.

III. What this Application is About

9. In order to appreciate the nature of the preliminary motions brought by the responding parties, it is necessary to understand the substance of the application filed by the applicants, the

relief that they seek from the Board, and certain other background information that does not appear to be in dispute.

10. Local 183 is a trade union located in Toronto, Ontario, that represents approximately 28,000 members. It is affiliated with, and chartered by, the Labourers' International Union of North America ("the International"), which has its head office in Washington, D.C. The applicants are former members, employees and officers of Local 183. Between September 8, 2007 and July 10, 2011, the applicants were five of the seven elected members of the Local 183 Executive Board, and employed as Sector Coordinators by Local 183. At all relevant times Mr. Terceira was the Business Manager for Local 183. Mr. Melo was its President, Mr. Avero was its Secretary Treasurer, and Mr. O'Brien was its Recording Secretary. Mr. Strazzanti was on the Executive Board as a member–at-large.

11. It is asserted by the applicants that there has existed a long history of tension between Local 183 and the International which has been punctuated by attempts made by the International to take control of Local 183. The election of the applicants to the Executive Board of Local 183 in 2007 followed a period of approximately 14 months during which Local 183 had been placed under trusteeship by the International. The applicants state that after Local 183 emerged from trusteeship in 2007, they tried to administer Local 183 in the interests of its membership. They assert that the International took exception to their efforts and prevailed upon the applicants to divest bargaining rights held by Local 183 to other local unions affiliated with the International. The applicants state that they resisted those efforts, and that the effect of that resistance was for the International to commence a campaign to undermine them and to remove them from office.

12. On November 10, 2009, the applicants, in their capacity as members of the Local 183 Executive Board, caused Local 183 to file an application with the Board under section 96 of the Act, alleging a violation of sections 76, 87, 147 and 149 of the Act against a number of responding parties. That application was given Board File No. 2388-09-U. Once numerous amendments to the application and the particulars provided of the allegations made in the application are taken into account, that application ultimately consisted of several hundred paragraphs of allegations made by Local 183 against the International, Mr. Joseph Mancinelli (an International Vice-President), Mr. Ronald A. Pink, Q.C. (the International's Special Counsel Canada) and Mr. Cosmo Mannella (the Business Manager of the Labourers' International Union of North America, Ontario Provincial District Council). The allegations in Board File No. 2388-09-U speak to events that occurred between late 2006 and mid-2009. Distilled to its absolute core, the key assertion made in the complaint is that the International interfered with the operations of Local 183 in contravention of the Act by way of a wide-ranging investigation into the affairs of Local 183 that was undertaken by the International through Mr. Pink.

13. From February, 2010 until April, 2011, a differently constituted panel of the Board devoted 15 hearing dates to the litigation of Board File No. 2388-09-U. Sixteen separate decisions were issued by the Board relating to that proceeding. However, no decision ever issued on the merits of the proceeding, because the application was withdrawn by Local 183 in late July, 2011, before the close of evidence.

14. The applicants make the following assertion at paragraph 11 of this complaint:

> The LIUNA campaign against the applicants was successful, in that the applicants were removed from office on July 10, 2011. The circumstances leading to this event are described in the applications in Board File Nos. 2388-09-U and 1091-11-M. The applicants plead and rely on the allegations made by Local 183 in Board File Nos. 2388-09-U and 1091-11-M. The application in Board File No. 2388-09-U was withdrawn by LIUNA and its agents, with leave of the Board, after LIUNA removed the applicants from office and replaced them with LIUNA's preferred candidates.

The reference in the above passage to the removal of the applicants from office is a reference to the results of an election for officers of Local 183 that was held on June 18, 2011. As will be set out in greater detail below, in June, 2011 the applicants ran for re-election to the Local 183 Executive Board as a slate of candidates. They were defeated by another slate of candidates led by Mr. Jack Oliviera and Mr. Luis Camara, who had previously served with the five applicants on the seven-person Local 183 Executive Board.

15. It is asserted by the applicants in this proceeding that, contrary to the provisions of the constitutions of both Local 183 and the International, the International interfered with and took control over the 2011 election of the Local 183 Executive Board. It is asserted that Mr. Mancinelli openly endorsed the Oliviera slate of candidates because the Oliviera slate had stated that if elected they would cause Local 183 to withdraw Board File No. 2388-09-U. The applicants also state that the International appointed its own Election Officer, Mr. Joseph Guerrieri, to oversee the Local 183 Executive Board election. It is asserted that Mr. Guerrieri and a colleague, Ms. Carmen Parcelli, took control of the election without authorization, usurped control of the process for determining candidate eligibility, and allowed nominees to stand for office who were plainly unqualified. The applicants also assert that Ms. Parcelli improperly took control of the voting process on voting day.

16. There is no dispute that the election for the Local 183 Executive Board was held on Saturday, June 18, 2011. The election was very close - so close that a recount was undertaken. The election for the post of President was determined by a difference of nine votes. The election for the post of Treasurer was determined by a difference of 149 votes. For the position of Vice-President, the difference between first and second place totalled 248 votes. The Recording Secretary position was determined by 314 votes, and the position of Business Manager was decided by 388 votes.

17. The applicants assert that the process at the polls was extremely flawed. They state that there were massive delays and considerable confusion at the polling stations, and that a confusing ballot, difficult to understand and use, was adopted by Ms. Parcelli for use in balloting without any input by local Election Judges. The applicants also complain about the uncontrolled distribution of ballots, such that more ballots were cast in the election than the number of verified eligible voters. Numerous other defects are asserted by the applicants in the voting process adopted by the Election Officer.

18. The applicants state that over 100 complaints regarding these flaws were submitted to the Election Officer and to the International Appeals Officer, but that the International declined

to rescind the election results. The applicants state that in the past the International has routinely moved to set aside election results of other local unions in circumstances reflecting far less irregularity. As a result, the applicants state that the International always intended that the election process displace them from their offices, regardless of the intentions of the members of Local 183.

19. The International filed with its response two documents that speak to the investigation performed by its Election Officer into the various complaints filed regarding the Local 183 election. On July 4, 2011, the Election Officer issued a Report of Preliminary Investigation in order to address a number of issues and summarize his findings to that date regarding the Local 183 election. The Election Officer notes in that report that he makes "no findings on any of the protests pending before the EO, and nothing contained herein should be construed as any indication of what my final ruling on the pending protests may be".

20. The final decision of the Election Officer was released on August 1, 2011. It is 75 double-spaced pages in length. The Election Officer indicates in his decision that more than 30 protests were received by his office from various candidates, employees and a few rank-and-file members of Local 183, raising both pre-and post-election issues related to the election of Local 183 officers. The Election Officer reaches the following conclusion on page 72 of his decision:

> VII. Conclusion And Remedy
>
> Following careful review and consideration of all protests and the evidence presented in this matter, I am satisfied that Local 183's election, while not perfect, was fundamentally fair and clearly expressed the will of the majority. …

The Election Officer concluded that there were some flaws in the process, and that in some 27 instances ballots were either cast or not counted in error. Mathematically, the election for President was the only position in which 27 votes could have affected the outcome. The Election Officer states that normally he would have ordered that the election for President be rerun within 60 days of the date of his decision. However, by August 1, 2011, the International had initiated disciplinary charges against the second place candidate for President, Mr. Melo, and a hearing before a panel of the General Executive Board on those charges was scheduled for August 10, 2011. Those charges could result in discipline being imposed upon Mr. Melo, up to and including expulsion from membership. Accordingly, the Election Officer indicated that he would await the outcome of the August 10, 2011 disciplinary hearing before determining whether it was necessary to rerun the Presidential election.

21. As will be set out in greater detail below, Mr. Melo was ultimately expelled from Local 183 as a result of the above-referenced disciplinary hearing. By way of a Supplemental Memorandum dated December 13, 2011, the Elections Officer concluded that the expulsion of Mr. Melo from membership precluded him from running for or holding office in Local 183. Accordingly, no further orders issued with respect to the Local 183 election for the office of President. The Election Officer's decision dated August 1, 2011 has not been challenged in any court of law.

22. On August 4, 2011, Mr. O'Brien appealed the decision of the Elections Officer dated August 1, 2011 to the International's Appellate Officer, Mr. W. Neil Eggleston. On or about August 19, 2011, a hearing was conducted by Mr. Eggleston in Washington, D.C. In attendance at that hearing were Mr. O'Brien, representatives from the Election Officer's office, representatives from the Appellate Officer's office, and Mr. Harold St. Croix, the Assistant Business Manager of Local 183. Mr. O'Brien raised four issues for determination before the Appellate Officer, including whether the Election Officer had the authority to assist in the election and to adjudicate disputes concerning the election. Ultimately, for reasons given on August 22, 2011, Mr. Eggleston dismissed the appeal brought by Mr. O'Brien. Like the Election Officer's decision dated August 1, 2011, the Appellate Officer's decision dated August 22, 2011 has not been challenged in any court of law.

23. As noted above, it is asserted in this application that the International was determined to seat its preferred slate as the new Local 183 Executive Board in order to take control of Local 183. The applicants plead that after the results of the election were known the International directed them to hold a regular membership meeting of Local 183 on July 10, 2011 in order to ensure that the applicants were displaced from the Local 183 Executive Board. The applicants assert that the prior established practice of the International and Local 183 was to dispense with July and August membership meetings, and that the International had already granted a special dispensation to Local 183 to cancel the July, 2011 and August, 2011 membership meetings. The applicants state that once the International became aware that its preferred slate of candidates had been elected, the International rescinded the special dispensation previously granted and directed the applicants to convene a July, 2011 membership meeting on July 10, 2011. The applicants complied with those directions, and a new Executive Board was seated that day.

24. The applicants state that on the next day, July 11, 2011, the new Executive Board, under the direction and control of the International, terminated the employment of the applicants and more than 50 other employees of Local 183. The applicants assert that the new Executive Board, under the direction and control of the International, did so to intimidate and coerce employees and members of Local 183 in order to prevent them from exercising their rights under the Act, including their right to join a trade union and to participate in its lawful activities, and including their right to administer their local union without improper interference from the International.

25. Finally, the applicants state that in order to effect further reprisals against them, the International directed the applicants to attend in Washington, D.C. in order to appear before a Hearing Panel. In fact, the applicants were each directed by the General President of the International to attend at a Show Cause Hearing before a Special Hearings Panel of the General Executive Board consisting of three Vice Presidents of the General Executive Board on August 10, 2011 (in the case of Mr. Melo and Mr. Strazzanti) or on August 11, 2011 (in the case of Mr. O'Brien, Mr. Terceira and Mr. Avero). The assertion made by the General President that triggered the Show Cause Hearings was that after failing to win re-election in the Local 183 election of officers, each applicant negotiated and/or approved a collective bargaining agreement with the Service Employees International Union Local 2, Brewery, General and Professional Workers' Union ("the SEIU") for a bargaining unit of approximately 80 employees of Local 183, including Sector Coordinators and business representatives, without giving advance notice

to the General President's designee in violation of the General President's orders and directives issued to the applicants shortly after the election on June 20, 2011 and June 21, 2011.

26. Only Mr. Melo, Mr. Strazzanti and Mr. O'Brien attended at their hearings. In the absence of Messrs. Terceira and Avero, the Special Hearings Panel proceeded nonetheless. The parties were permitted to make opening statements, to present evidence and testimony through witnesses, to cross-examine those witnesses, and to make closing statements. The Special Hearings Panel ultimately concluded that the assertions made against the five applicants by the General President had been made out. With respect to each of the applicants, the Special Hearings Panel concluded that he had failed to comply with an order of the General President without good and sufficient reason for non-compliance. The Panel recommended that the applicants be expelled from membership in the International. By letter dated September 22, 2011, each applicant was advised that he had been expelled from membership in the International. There appears to be no dispute that their expulsion from membership in the International precludes the applicants from running for or holding office in Local 183.

27. There is nothing pleaded in the materials filed with the Board that discloses whether any one of the applicants has appealed the decision made by the General Executive Board to expel him from membership in the International. The correspondence directed to each applicant from the International dated September 22, 2011 indicates that an internal appeal in accordance with Article VIII, Section 2 of the International Constitution can be made to the next Convention. Counsel for the applicants indicated during argument that the applicants had, in fact, launched an appeal of those decisions, and that the next Convention is scheduled to occur in 2016, five years after the applicants were expelled.

28. During the course of the events set out above, there were applications brought before the Board and the Ontario Superior Court of Justice. On June 27, 2011 (after the Local 183 officers election, but prior to the seating of the new Local 183 Executive Board) the applicants, constituting a majority of the Local 183 Executive Board, caused Local 183 to apply to the Board under subsection 98(1) of the Act for interim relief in Board File No. 2388-09-U. The Board gave that application Board File No. 1091-11-M. Local 183 asserted in that application that the outcome of the Local 183 Executive Board election was the result of various unfair labour practices committed by the International. Local 183 sought an order from the Board suspending the results of that vote. In particular, Local 183 sought an order that would preclude the swearing in of the new Local 183 Executive Board on July 10, 2011.

29. A consultation in Board File No. 1091-11-M was held before a differently constituted panel of the Board on July 5 and 6, 2011. On July 8, 2011, a decision of the Board issued. The Board dismissed the request for relief made by Local 183. I will discuss, below, various aspects of that decision. For the purpose of this summary of the relevant facts, it suffices to say that the Board concluded that Local 183 had raised a serious issue to be tried, but that it had not raised a strong case for relief. The Board further concluded that the balance of labour relations harm and the public interest lay in favour of not granting the relief sought. The Vice-Chair who determined that application concluded that Local 183 had not established a sufficiently strong and substantial case for relief in the face of "the fundamental legitimacy of electoral success"

inherent in the results of the balloting. The decision of the Board on interim relief was not judicially reviewed.

30. On or about July 4, 2011, counsel for the five applicants instituted proceedings in the Ontario Superior Court of Justice regarding the election on behalf of the five applicants and two other individuals who were candidates in the Local 183 officer's election, Mr. Calvin Bolger and Mr. Horacio Leal. At the instance of Mr. Bolger, Mr. Leal and the five applicants, a Notice of Application was issued by the Court. Amongst other relief, the seven applicants sought a declaration from the Court that the election of officers to the Local 183 Executive Board was not conducted in accordance with the provisions of the constitution governing Local 183's management and affairs, and that the election results of June 18, 2011 should be declared to be "null and void, and of no force and effect". The seven applicants filed a motion for an interim order to enjoin the seating of the successful candidates in the Local 183 officers' election. It appears from the materials filed with the Board that an appearance before the Court occurred on July 5, 2011. On July 28, 2011, counsel for the seven applicants wrote to counsel for the International and advised that his clients "will not be proceeding with this application".

31. Prior to the commencement of the hearing in this proceeding, counsel for the International asserted by way of correspondence directed to counsel for the applicants that in late October, 2011, three of the applicants (Mr. Terceira, Mr. Avero and Mr. Melo) had accepted employment as representatives of the United Brotherhood of Carpenters and Joiners of America and/or one or more of its subordinate bodies located in Ontario ("the Carpenters"). It was also asserted that in early November, 2011, Mr. Terceira, Mr. Avero and Mr. Melo actively assisted in an organizing campaign brought by the Carpenters in the name of Healthcare, Office and Professional Employees Union, UBCJA, Local 2220 ("Local 2220") to displace the Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 as bargaining agent of a group of long-term care homes operated by the Chartwell Seniors Housing REIT. On November 30, 2011, Local 2220 did, in fact, file a displacement application for certification with the Board relating to the Chartwell Seniors Housing REIT (Board File No. 2888-11-R).

32. During the course of argument counsel for the applicants did not dispute the above-noted assertions of fact made by counsel for the International. He did dispute the relevance of the assertions. Counsel argued that the three applicants in question had mitigated their loss of employment as required by law. He also noted that not all of the applicants had mitigated their losses in that fashion.

33. Returning to the instant proceeding, the five applicants state that all of the reprisals identified in the above factual narrative have had a chilling effect on the membership and employees of Local 183, and that the International has sent a clear message to Local 183 members and employees that no objection to the International's interference with the autonomy of a local trade union will be tolerated by the International.

34. The relief sought by the applicants is identified in Schedule "A" to their complaint as follows:

> 1. A declaration that the responding parties have violated the Act.
>
> 2. An order directing the responding parties to stop violating the Act.
>
> 3. An order for reinstatement in employment of all employees terminated by the responding parties contrary to the Act.
>
> 4. An order for full compensation for all losses incurred by the applicants as a result of the unlawful conduct of the responding parties, including lost salary and benefits, expenses and interest.
>
> 5. An order for compensation for the applicants' legal expenses incurred responding to the various steps taken by the responding parties in violation to the Act, including responding to charges and allegations pursuant to the constitution of the Laborers International Union of North America.
>
> 6. An order setting aside the results of the election of members of the Executive Board of the Universal Workers Union – Laborers International Union of North America, Local 183, purportedly held on June 18, 2011, and requiring that a proper election be conducted under the supervision of the Board.
>
> 7. An order for reinstatement of the applicants as members of the Executive Board of the Universal Workers Union – Laborers International Union of North America Local 183 until such time as a proper election has been conducted under the supervision of the Board.
>
> 8. An order for aggravated and punitive damages to compensate the applicants for the unlawful and high handed conduct and flagrant violations of the Act by the responding parties.
>
> 9. Such other relief as counsel may advise and as may be appropriate.

35. The International and Local 183 both filed a response to the allegations raised by the applicants. Mr. Pink filed an intervention in this proceeding. His status to intervene is not in dispute. The International, Local 183 and Mr. Pink vigorously dispute the assertions of fact made by the applicants. I will outline below, where appropriate, the assertions of fact made by the International, Local 183 and Mr. Pink in response to the allegations made by the applicants summarized above.

IV. The Preliminary Motions brought by the Responding Parties

36. In its response filed with the Board, the International identified a number of preliminary motions that it desired to argue. The preliminary motions were subsequently refined

by the International through correspondence filed with the Board. The following motions were argued by the parties at the hearing held on December 19, 2011:

> (a) that insofar as any remedy is sought by the applicants relating to the conduct of the Executive Board vote, the application should be dismissed without a hearing on the basis of *res judicata* and/or issue estoppel;
>
> (b) that the application should be dismissed for abuse of process and/or because it lacks a valid labour relations purpose;
>
> (c) that the application is untimely insofar as the basis for the remedial requests are allegations of fact contained in Board File No. 2388-09-U; and
>
> (d) that the applicants lack standing to bring this application.

The International, Local 183 and Mr. Pink all asserted that one or more of the above-referenced arguments ought to lead the Board to dismiss all or parts of this application without reference to its merits. Counsel for each of the International, Local 183 and Mr. Pink argued a separate portion of the preliminary motions in order to avoid duplication. I set out below the substance of the motions, the positions taken by the parties, and my decision on the motions brought. As is often the case, the summary of the positions taken by the parties set out below does not do justice to the quality of the argument provided by counsel.

(a) Res Judicata and/or Issue Estoppel

37. The International argues that the application should be dismissed, insofar as any relief is sought by the applicants relating to the conduct of the Local 183 Executive Board election, on the basis of *res judicata* and/or issue estoppel. However, there is no real dispute that of those two doctrines, the doctrine of issue estoppel is the only one that has application on the facts of this proceeding.

38. The International relies upon the preconditions to the operation of issue estoppel as defined by the Supreme Court of Canada at paragraph 25 of *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, 2001 SCC 44 (CanLII), namely:

> (a) that the same question has been decided;
>
> (b) that the judicial decision which is said to create the estoppel was final; and
>
> (c) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

All parties in this proceeding agreed that the preconditions set out above in *Danyluk* must be established for the doctrine of issue estoppel to have application in a court of law.

39. Counsel for the International acknowledged that the rigid adherence to the test established by the Supreme Court in *Danyluk* would preclude the doctrine of issue estoppel from being applied to this proceeding. However, he asserted that the Board has the jurisdiction to adapt the principles identified in *Danyluk* to the specific context of labour relations, relying upon the recent decision of the Supreme Court of Canada in *Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals*, 2011 SCC 59 (CanLII). In that case, a labour arbitrator concluded that a union that had acquiesced to an employer's application of a collective agreement was estopped from asserting its strict legal rights under that collective agreement until the agreement expired. That determination was overturned upon judicial review. On appeal to the Supreme Court of Canada, the appeal was allowed. In his reasons for judgment, Mr. Justice Fish, speaking on behalf of the Court, made the following observations:

> 44. Common law and equitable doctrines emanate from the courts. But it hardly follows that arbitrators lack either the legal authority or the expertise required to adapt and apply them in a manner more appropriate to the arbitration of disputes and grievances in a labour relations context.
>
> 45. On the contrary, labour arbitrators are authorized by their broad statutory and contractual mandates – and well equipped by their expertise – to adapt the legal and equitable doctrines they find relevant within the contained sphere of arbitral creativity. To this end, they may properly develop doctrines and fashion remedies appropriate in their field, drawing inspiration from the general legal principles, the objectives and purposes of the statutory scheme, the principles of labour relations, the nature of the collective bargaining process, and the factual matrix of the grievances of which they are seized.

40. Counsel for the International argued that all of the factual assertions made by the applicants have been previously made before the Board and/or the Elections Officer, and could have been made before the Ontario Superior Court, but were not. Counsel reviewed each paragraph of the application with this assertion in mind, and argued that the doctrine of issue estoppel ought to be applied to preclude the applicants from arguing the very same issues a further time. He argued that this application and the various other proceedings involved the same parties or their privies, and asserted with particular reference to the Elections Officer that the findings made by Mr. Guerrieri were clearly adjudicative and sufficiently independent to support the application of the doctrine of issue estoppel. Counsel noted the observation made by Mr. Justice Binnie in paragraph 21 of *Danyluk*, cited above, namely that principles such as *res judicata* and issue estoppel "balance fairness to the parties with the protection of the administrative decision-making process, whose integrity would be undermined by too readily permitting collateral attack or relitigation of issues once decided".

41. Counsel for Local 183 and counsel for Mr. Pink agreed with the argument made by counsel on behalf of the International.

42. When one reviews the assertions of fact made by the applicants regarding the conduct of the Local 183 officers' election, it becomes evident that the issues and complaints raised by

the applicants regarding the conduct of the Local 183 election have been raised by the applicants (or by Local 183 when its actions were controlled by the applicants) in a number of different forums since June 18, 2011. However, notwithstanding the able argument made by counsel for the International, I have concluded, largely for the reasons argued by counsel for the applicants, that this argument cannot succeed. Simply put, the substance of the assertions made by the applicants regarding the conduct of the Local 183 officers' election have never been finally determined by a judicial or quasi-judicial decision maker.

43. I consider first the Board's decision dated July 8, 2011 in the application for interim relief (Board File No. 1091-11-M). That application for interim relief was determined on the basis of written declarations signed by individuals and filed with the Board. In accordance with the Board's customary practice, no evidence was called by the parties, and there was no cross-examination with respect to the facts asserted by individuals in their declarations. The Board determined whether interim relief of the nature sought by Local 183 should issue on the basis of the paper record before it, as augmented by the legal argument of counsel who appeared at a two-day consultation.

44. In its decision dated July 8, 2011 (reported at [2011] OLRB Rep. July/August 442), the Board decided none of the underlying issues raised by the applicants relating to the Local 183 officers' election. No findings of fact were made. In fact, the Vice-Chair who issued the decision in the interim relief proceeding specifically states, at paragraph 21 of his decision, that he is "unable to resolve any of the factual disputes in an interim application". He further states that it would be inappropriate for him to do so. As a result, it is simply not possible to state that the issues before the Board in the instant proceeding relating to the conduct of the Local 183 officers' election were finally decided by the panel of the Board that decided the application for interim relief.

45. This same result applies to any of the previous interim applications filed with relation to Board File No. 2388-09-U that were referred to by counsel for the International during the course of argument. By their very nature, interim applications do not result in findings of fact, and thus should not attract the application of the doctrine of issue estoppel.

46. The effect of the decision of Mr. Guerrieri, the Elections Officer, dated August 1, 2011, and the decision of Mr. Eggleston, the Appeals Officer, dated August 22, 2011, requires a slightly different analysis. Mr. Guerrieri's decision addresses squarely the substance of the assertions made by the applicants relating to the conduct of the Local 183 election, as does the decision of Mr. Eggleston. Quite frankly, the decision of August 1, 2011 specifically rebuts in considerable detail most of the allegations made by the applicants in this proceeding. However, what becomes evident from a review of the materials before the Board is that the Elections Office is not a judicial or quasi-judicial body, and the Elections Officer, Mr. Guerrieri, is not a judicial or quasi-judicial decision maker.

47. The decision issued on July 8, 2011 in the application for interim relief in Board File 1091-11-M summarized the role of the Elections Officer as follows, at paragraph 18:

> ... The LIUNA Constitution provides that the Elections Office will rule on disputes about the conduct of an election before the election,

> set rules, provide training to the "Elections Judges" (who are appointed by the local union), provide advice and assistance to the local unions and hear appeals from contested elections. In this contest both slates sought pre-vote rulings and assistance from the Elections Office and received rulings on some of their complaints. The Elections Office determined the form of the ballot and granted an exception to the general rule forbidding "block" voting. The Elections Office is ultimately an office created by the International Constitution and, although it is set up as an independent office within the International Union, is part of the parent union structure. Its involvement, however, is one that is provided for in the Constitution of the Union and was a process in which Local 183 participated willingly.

48. Mr. Guerrieri discusses his role as Elections Officer in his August 1, 2011 decision. The Elections Office itself is established by Article VII, Section 7 of the International's Constitution. The Elections Officer is appointed by the General Executive Board. Amongst other things, he or she adjudicates all disputes pertaining to the integrity of the nomination and election of delegates to the International's regular Convention, and he or she resolves all disputes pertaining to the qualification, nomination and election of delegates. In a similar fashion, the role of the Appellate Officer is established by Article VII, Section 9 of the International Constitution. That provision states that the Appellate Officer has the authority to review and pass upon any decision of the Elections Officer. The Appellate Officer is directed by the International Constitution to affirm the decision of the Elections Officer unless it is determined that the Elections Officer acted contrary to the terms of, amongst other things, the International's Constitution or governing law, or if it is determined that there was an abuse of discretion on the part of the Elections Officer.

49. The decision of the Elections Officer dated August 1, 2011 appears on its face to be thorough and complete. Mr. Guerrieri appears to have spent considerable effort investigating the various complaints filed with his office, and his decision extensively deals with those complaints. However, the process utilized by Mr. Guerrieri to reach his findings of fact was not quasi-judicial. No hearing was held. No witnesses testified, no cross-examination of witnesses occurred, and no argument was entertained by Mr. Guerrieri regarding the findings of fact that he ought to reach. Keeping in mind that the Elections Officer is an appointee of the General Executive Board of the International, it is simply not reasonable to characterize the role of the Elections Officer as a quasi-judicial decision maker whose decisions on matters within his authority ought to attract the application of the doctrine of issue estoppel. The Elections Officer is too closely connected to the International to allow for that conclusion. For that very same reason, the decision of the Appellate Officer also cannot reasonably attract the application of the doctrine of issue estoppel.

50. Finally, I consider the effect of the application made by the applicants (and two others) to the Superior Court of Justice on July 4, 2011. As was pointed out by counsel for the applicants during the course of argument, the effect of a discontinued application made to the Superior Court of Justice is dictated by Rule 23.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, which provides that the discontinuance of all or part of an action is not a defence to a subsequent action, unless the order giving leave to discontinue or a consent filed by the

parties provides otherwise. There is nothing before the Board to suggest that any such order or consent exists.

51. The Court did not make any findings of fact in the application filed by the applicants. For the purpose of the application of the doctrine of issue estoppel, the fact that the applicants raised issues before the Court by way of an application before that court, and then discontinued that application, does not establish the preconditions required to apply the doctrine of issue estoppel.

52. I appreciate that the Supreme Court recently indicated in *Nor-Man Regional Health Authority Inc.*, cited above, that labour adjudicators have the statutory mandate and expertise to adopt and develop doctrines such as issue estoppel to the labour relations context before them. Although decided in the context of a rights arbitration under a collective agreement, there is no reason why the principles articulated by the Supreme Court in *Nor-Man Regional Health Authority Inc.* ought not to have equal application to a labour relations board established by statute. Accordingly, in an appropriate case, I would not hesitate to apply the preconditions identified by the Supreme Court in *Danyluk* in a pragmatic way so that litigation before the Board proceeds in an effective and efficient manner.

53. Here, however, the circumstances are not appropriate for the application of an adapted or modified doctrine of issue estoppel. There were no facts found in either the application for interim relief in Board File No. 1091-11-M, or in the application filed with the Superior Court of Justice. With respect to the August 1, 2011 and August 22, 2011 decisions of the Elections Officer and Appellate Officer, respectively, I am of the view that their roles are simply too closely tied to the interests of the International to permit the findings and conclusions made in their decisions determinative of the facts and conclusions in this proceeding.

54. For these reasons the motion made by the International relating to the application of issue estoppel is dismissed.

(b)(c) Abuse of Process, Board Discretion, and Timeliness

55. I have determined that it is appropriate to deal with the preliminary objections relating to abuse of process, the Board's discretion under section 96 of the Act, and timeliness together.

56. Counsel for the International asserted during argument that this application ought to be dismissed on the basis that it constitutes an abuse of the Board's processes, or because it would serve no labour relations purpose to litigate the allegations made by the applicants. Counsel relies upon subsection 23(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "SPPA"), which provides the Board with the authority to dismiss a proceeding if the litigation of that proceeding were to constitute an abuse of the Board's processes. Subsection 23(1) of the SPPA provides as follows:

> A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

57. Counsel argued that the Board ought to exercise its authority to dismiss an application under subsection 23(1) of the SPPA when the doctrine of issue estoppel is not available to the Board. He relied upon the following passage from the judgement of Madam Justice Arbour, speaking for the majority of the Supreme Court of Canada, in *City of Toronto v. CUPE Local 79*, [2003] 3. S.C.R. 77, 2003 SCC 63, at paragraph 37:

> 37. In the context that interests us here, the doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would . . . bring the administration of justice into disrepute" (*Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, *per* Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63)). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
>> The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).
>>
>> One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added.]
>
> As Goudge J.A.'s comments indicate, Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice. (See, for example, *Franco v. White* (2001), 53 O.R. (3d) 391 (C.A.); *Bomac Construction Ltd. v. Stevenson*, [1986] 5 W.W.R. 21 (Sask. C.A.); and *Bjarnarson v. Government of Manitoba* (1987), 38 D.L.R. (4th) 32 (Man. Q.B.), aff'd (1987), 21 C.P.C. (2d) 302 (Man. C.A.).) This has resulted in some criticism, on the ground that the doctrine of abuse of process by relitigation is in effect non-mutual issue estoppel by another name without the important qualifications recognized by the American courts as part and parcel of the general doctrine of non-mutual issue estoppel (Watson, *supra*, at pp. 624-25).

Counsel also referred during the course of argument to *Domca Forming Ltd.*, [2010] OLRD No. 1065, where the Board stated that the doctrine of abuse of process can be utilized by the Board in an appropriate case, citing the Board's earlier decision in *The John Hayman and Sons Company Limited*, [2005] OLRB Rep. July/August 632.

58. It was asserted by counsel for the International that the power provided to the Board pursuant to subsection 23(1) of the SPPA can be used when applications are filed asserting claims that had previously been raised before the Board and then subsequently withdrawn. Counsel referred to the Board's decision in *William A. Curtis*, [1993] OLRB Rep. December 1260 in support of his position. In that decision, the applicant filed a complaint under section 96 of the Act with the Board that made reference to the facts previously pleaded in two other applications which had been withdrawn.

59. Alternate Chair MacDowell, as he then was, concluded (at paragraph 28) that the litigation strategy engaged in by the applicant was "vexatious and an abuse of process which should not be entertained". He noted, at paragraph 32, that the fresh complaint was a transparent attempt to revive and relitigate the complaints that had previously been withdrawn by the applicant. He concluded that it was not open to the applicant to do so, because it would not be an appropriate use of the complaint mechanism under the Act, and because it would not be fair to the other parties to require them to defend against previously withdrawn allegations. The complaint was dismissed, having reference to the discretion provided to the Board under what is now section 96 of the Act.

60. In that regard, the International also asserted that this application ought to be dismissed pursuant to the Board's general discretion under section 96 of the Act, on the basis that no labour relations purpose would be served by litigating the allegations pleaded by the applicants. Counsel argued that the relief sought by the applicants – namely their installation as the Local 183 Executive Board – is impossible, having regard to the fact that they have been expelled from membership in the International, and therefore cannot hold membership or office in Local 183. The fact that three of the applicants were now employed by the Carpenters would also preclude them from becoming installed as the Local 183 Executive Board. Counsel asserts that the Board would never grant the remedy sought by the applicants, and that in the absence of a remedy that is potentially achievable, the Board ought not to enquire into the substance of a complaint filed with it. Counsel relied upon *Universal Workers Union, Labourers' International Union of North America, Local 183*, [2007] OLRD No. 520 and *Centennial Electric Ltd.*, [2009] OLRB Rep. May/June 352. In both of those cases, the Board exercised its discretion under section 96 of the Act to not inquire into an unfair labour practice application where to do so would serve no labour relations purpose.

61. With respect to the question of timeliness, Mr. McGee, counsel for Mr. Pink, noted that this application incorporates by reference the entire proceeding in Board File No. 2388-09-U. He noted that the amended pleading in that proceeding consisted of several hundred paragraphs that were modified and updated over the period of 18 months. Literally hundreds of paragraphs and subparagraphs of the amended, consolidated application in Board File No. 2388-09-U speak to events that precede the filing of this application by more than one year.

62. In that context, counsel for Mr. Pink argued that this application ought to be dismissed on the basis that the delay in asserting the facts pleaded relating to Board File No. 2388-09-U is extremely prejudicial to the responding parties and to Mr. Pink. Counsel argued that the Board's case law establishes that in circumstances where allegations made in a complaint relate to events that occurred more than one year prior to the filing of the complaint, the onus shifts to the

applicant or applicants to explain in a satisfactory manner the delay in filing. Here, counsel for Mr. Pink asserts that there can be no legitimate explanation for the delay, because the five applicants, as part of the Local 183 Executive Board, were in attendance at the Board during all of the hearing dates in Board File No. 2388-09-U.

63. Counsel noted that the Board has also taken into account when considering the effect of a delay whether the applicant or applicants had sufficient knowledge of the facts pleaded in the application in order to take action on a timely basis. Here, counsel for Mr. Pink asserted that there is no question at all that the applicants had that knowledge, because at all times they were instructing counsel on behalf of Local 183. Counsel for Mr. Pink acknowledged that none of the applicants to this proceeding had individual counsel at the time, but noted that during the course of a dispute in Board File No. 2388-09-U regarding the ability of counsel for Local 183 to take instructions from the five applicants, that counsel asserted that there would be no conflict created in the circumstances.

64. Counsel for Mr. Pink argued that the corrosive effect that the passage of time has on memories ought to lead to the conclusion that the application be dismissed. He noted that the Board's case law established a presumption of prejudice when the delay in filing exceeded 12 months in duration. However, he also noted that the 12 month demarcation point is not an absolute rule, and that applications have been dismissed for delay in circumstances where the delay was less than 12 months. Counsel asserted that because of the enormity of the factual assertions made in Board File No. 2388-09-U, the prejudice caused to his client, to the International and to Local 183 of relitigating that proceeding would be significant.

65. With particular reference to Mr. Pink, counsel noted that the underlying challenge made by Local 183 in Board File No. 2388-09-U was to his integrity and reputation. He noted that maintaining his integrity is a critical interest for Mr. Pink, because the highest level of integrity is required to remain as Special Counsel Canada for the International. Mr. McGee argued that his client's position in Board File No. 2388-09-U was that the five applicants had filed the application in order to unfairly smear his reputation, solely for their own personal interests. Here, counsel states that the applicants seek to launch, once again, the same, wide ranging inquiry into the reputation of Mr. Pink. Mr. McGee asserted that it is too late to do so, and that the Board ought not to permit the five applicants to once again make those claims.

66. Counsel for Mr. Pink reviewed and relied upon the following cases during the course of his argument: *The Corporation of the City of Mississauga*, [1982] OLRB Rep. March 420; *Sarnia Construction Association*, [2004] OLRB Rep. March/April 407; *David Gazit*, [1998] OLRD No. 4650; *John Kohut*, [1991] OLRB Rep. December 1367; and *Botiuk v. Toronto Free Press Publications Ltd.*, [1995] 3 S.C.R. 3.

67. Counsel for the applicants took issue with the position argued by the International. He states that the fact that three of the five applicants have mitigated their losses by finding alternate employment ought not to lead the Board to the conclusion that this application is an abuse of the Board's processes. He notes that many individuals previously employed by one or more entities affiliated with the International now work for an entity affiliated with the Carpenters.

68. With particular reference to the argument that the Board ought to exercise its discretion to dismiss this application on the basis that no labour relations purpose would be served by litigating the allegations made by the applicants, counsel for the applicants submitted that the fact that the International unlawfully revoked the membership of the five applicants – something that they complain of in this application – cannot properly support the assertion that the application ought to be dismissed.

69. Counsel for the applicants also took issue with respect to the timeliness objection argued by counsel for Mr. Pink. Counsel noted that this application was filed with the Board on July 29, 2011 - mere weeks after the applicants were terminated from their employment and from their positions on the Local 183 Executive Board. He asserted that the allegations raised in Board File No. 2388-09-U were timely allegations at the time that they were initially pleaded. As a result, he argued that there could be no prejudice to the responding parties here or to Mr. Pink, because they were all aware of those allegations at the time they were initially pleaded, or when they were particularized by counsel then acting for Local 183. Counsel made reference to the Board's decision in *Serco DES Inc.*, 2004 CanLII 49727 (ON LRB). In that decision, the Board stated the following, at paragraph 28:

> … The responding parties were put on notice of the intention of three of the four applicants to file a complaint under the Act within six months of learning of Serco's decision not to hire them. The delay is less than one year in any event. None of the responding parties have particularized any actual prejudice. In these circumstances, the Board is not prepared to exercise its discretion to dismiss the application under Rules 38, 39 and 40 for delay.

With respect to this proceeding, the applicants state that the responding parties and intervenor have had knowledge of all of the allegations, and have been in possession of all of the documentation arguably relevant to those allegations, for years.

70. As noted above, the current Local 183 Executive Board withdrew the application filed in Board File No. 2388-09-U in July, 2011. Counsel for the five applicants asserts that the withdrawal of that complaint does not mean that the underlying factual allegations "go away" for all time. Counsel argued that, even in situations where a settlement is reached by parties, the Board has indicated that the underlying factual assertions can be relied upon in future litigation. Counsel relied upon the following passages in *Comstock Funeral Home Ltd.*, [1981] OLRB Rep. December 1755:

> 13. At the hearing of the fresh section 89 [now section 96] complaint which these developments predictably spawned, the complainant claimed the right to adduce evidence of all the allegations contained in its prior complaints, on the sole basis that they were relevant in demonstrating through a pattern of conduct the anti-union animus necessary to sustain the present complaint. The complainant conceded that it was precluded by the settlement from seeking any form of relief with respect to the prior complaints, and made it clear that it was not attempting to do so. …

> 15. The Board appreciates that any number of reasons may prompt a party to settle rather than litigate an issue, and for that reason has never sought to draw any inference whatever from either the fact of a settlement or the terms of the settlement themselves. Indeed, in the absence of a claim of non-compliance, it is doubtful whether the latter could be properly before the Board at all. On the other hand, the settlement of a particular complaint does not obliterate the fact that certain events, whether or not forming a part of such other complaint, did happen. And if those events are arguably relevant to either support or defend a fresh complaint arising from subsequent developments, the events themselves continue to be provable and admissible in evidence.
>
> 16. The Board's approach to this situation can be seen in the case of *Craft Line Industries Limited*, [1977] OLRB Rep. April 246. There it was the respondent employer who was asking the Board to draw an inference from the fact that several previous complaints against it had been either settled or withdrawn. The Board commented on that submission as well on the extent to which evidence common to both the prior and current complaints was admissible, at paragraph 5:
>
>> The Board is not prepared to find that the complainant has engaged in an abuse of process by virtue of having filed a series of section 79 complaints against the respondent which have either been settled or withdrawn. The practice and procedures of the Board are designed to encourage settlement as an alternative to litigation. The parties are free to settle on whatever basis is mutually acceptable to them and in the circumstances of this case the Board is not prepared to infer that the previous complaints have been frivolous ones solely designed to force concessions at the bargaining table. The Board would point out, however, that the evidence adduced in respect to the prior complaints will be admitted for the limited purpose of establishing a pattern of unlawful activity and not for the purpose of gaining redress for the alleged unlawful activity.
>
> The settlement of a complaint continues to be advantageous to a party for all of the reasons one would normally contemplate settlement. But a party is not entitled to think that by the settlement of a particular complaint, it thereby obliterates the past, and can act thereafter with relative impunity …

Counsel for the applicants also relied upon *Angelica Uniform of Canada Ltd.*, [1991] OLRB Rep. May 585 (at paragraph 6) to that same effect.

71. On the basis of the case law cited above, counsel for the applicants argued that the allegations of fact made in Board File No. 2388-09-U are properly in play for the purpose of this proceeding if they are used solely for the purpose of establishing a pattern of activity on the part

of the responding parties. As a result, the applicants state that their application cannot properly be dismissed on the basis of delay.

72. In response to the argument made by counsel for the applicants, counsel for Mr. Pink asserted, amongst other things, that given the applicants' position that the litigation in Board File No. 2388-09-U must start over from the beginning, the consequence of relitigation is a substantial prejudice to Mr. Pink, Local 183, the International, and in fact for anyone who is alleged in that proceeding to have done anything improper. Counsel argued that to assert, as the applicants do, that there is no prejudice to the parties previously involved in Board File No. 2388-09-U, is to fundamentally misunderstand the nature of that previous litigation.

73. It is by now well-established that section 96(4) of the Act provides the Board with the discretion to refuse to entertain an application. In *Wal-Mart Canada Corp.*, [2011] OLRB Rep. July/August 490, the Chair of the Board recently summarized the considerations taken into account by the Board when determining whether to exercise this discretion:

> 51. The Board's jurisprudence with respect to its discretion under section 96 of the Act is well-established. The Board possesses discretion whether it will inquire or not inquire into an unfair labour practice complaint, and, in particular, because proceeding further serves no labour relations purpose. That is because:
>
> > "It is important for the Board to expend [its] limited resources in a way that is consistent with the objectives of the statute, will best accomplish its statutory mandate, and is sensitive to practical labour relations realities".
>
> See the frequently cited *SEIU Local 204*, unreported decision dated January 16, 1995, OLRB File No. 3431-94-U.
>
> 52. That discretion may be exercised at any point in the Board's proceedings. The factors that the Board will look at in determining whether to exercise its discretion not to inquire into a complaint are set forth in many cases and include:
>
> (a) delay in filing the complaint;
>
> (b) whether the case makes out an arguable case for breach of the Act;
>
> (c) the likelihood of success;
>
> (d) the nature and utility of any remedy that might flow;
>
> (e) the cost implications for the parties and the public;
>
> (f) whether some statutory or labour relations purpose is to be served by the litigation exercise.

> As the Board has repeatedly observed, the question of whether there is a labour relations purpose in proceeding with a section 96 complaint is a separate question from that of whether a *prima facie* case of a violation of the Act has been made out or whether the Board has the jurisdiction to grant the relief sought. The Board cases have simply summarized the issue as:
>
> > "The question of whether there is a labour relations purpose to be served by the litigation exercise has typically been determined by comparison of the labour relations reality that prompted the complaint in the first place, as compared to its reality at the time that the question of exercising the discretion arises. The Board asks itself two questions: Does the situation that prompted the applications still exist; and/or does the relief requested still make sense?"
>
> See *Stock Transportation Ltd.*, 2006 O.L.R.D. No. 2350 at paragraph 13.

See also *Toronto Hydro Corporation*, 2011 CanLII 77614 (ON LRB), at paragraphs 43 and following for another recent decision of the Chair of the Board applying these same principles.

74. Some of the considerations identified above suggest that this application ought to proceed to be heard on its merits. There is no doubt that this application was filed shortly after the events of June, 2011 and July, 2011 that underpin some of the relief sought. To that extent the application is timely. There is also no doubt that the application makes out an arguable case for the proposition that the Act has been breached. None of the responding parties suggested that this application ought to be dismissed on the basis that it does not disclose a *prima facie* violation of the Act. Furthermore, at this stage it is not possible to reach any conclusions regarding the likelihood of success of the assertions made by the applicants.

75. Notwithstanding the above considerations, having regard to the nature and utility of the remedy sought by the applicants, it is not at all clear to me that there is any statutory or labour relations purpose to be served by litigating this complaint to completion. The cost implications for the parties and the public of litigating this proceeding are also factors that lead me to conclude that this application ought not to proceed to a hearing on the merits.

76. I turn first to the question of the nature and utility of the remedy that might be available to the applicants should they be successful in this proceeding. It is helpful at this juncture to recall what it is that the applicants want the Board to do for them should their complaint be upheld. It will be remembered that in addition to certain relatively minor remedial measures, the applicants request from the Board (a) an order for their reinstatement to employment with Local 183, and the reinstatement of all employees terminated by the International and Local 183 contrary to the Act; (b) an order for full compensation for all losses incurred by them as a result of the unlawful conduct of the International and Local 183; (c) an order for compensation for the applicants' legal expenses; (d) an order setting aside the results of the election of members of the Executive Board and requiring that a proper election be conducted under the supervision of the Board; and (e) an order for the reinstatement of the

applicants as members of the Executive Board until such time as a proper election has been conducted under the supervision of the Board.

77. For the reasons that follow, I have come to the conclusion that, even if the applicants are successful in this application, I would not provide them with any of the significant relief that they seek.

78. I start by considering the implications of the employment currently enjoyed by Messrs. Terceira, Avero and Melo. As noted above, there appears to be no dispute that those three applicants have secured gainful employment with the Carpenters, and that they have had some involvement in at least one application to the Board in which a local union of the Carpenters has sought to displace a local union chartered by the International.

79. A similar situation involving Local 183 came before the Board five years ago. In *Universal Workers Union, Labourers' International Union of North America, Local 183*, [2007] OLRD No. 520, two former Local 183 Executive Board members sought from the Board an order pursuant to section 149 of the Act that Local 183 hold immediate elections to choose a new Executive Board. The International and Local 183 sought dismissal of that application when they learned that the two former members had established a new construction union and intended to raid bargaining units belonging to both Local 183 and the International during an upcoming "open period".

80. The Board ultimately dismissed the application on the basis that no labour relations purpose would be served by permitting the two former Executive Board members to proceed any further with their application. The Board made the following observations at paragraphs 9 and 10 of its decision:

> 9. The remedial discretion provided to the Board under s. 149(4) should only be exercised where there is a labour relations purpose to be served. Here, Messrs. Dionisio and Dias are seeking remedies designed to remove control of a local trade union from the Trustee and LIUNA, while at the same time engaging in work which is at the least, in opposition to the very same local union. Clearly, Messrs. Dionisio and Dias have chosen to cast their lot with a new trade union and do not deny that this new union may "raid" the bargaining units currently held by Local 183. (Indeed, as of this writing, at least one application for such a "raid" may have already been filed.) Given that the only individuals seeking early elections are the same individuals that have established a new union to compete with LIUNA and Local 183, I see no reason to order elections to take place prior to June 12, 2007 and particularly during the open period, even if the alleged "purge" of staff had taken place. It makes no labour relations sense, in my view, to allow Messrs. Dionisio and Dias to use these proceedings to exert and/or regain control over Local 183, while they seek to raid Local 183's bargaining rights through another union. Nor do I see any reason to consider reinstatement of staff members who have not appeared before me to seek such reinstatement.

> 10. In light of the foregoing, the Board concludes that there is no labour relations purpose served in permitting Messrs. Dionisio and Dias to proceed any further with this application (except as follows). On the facts as agreed, the Board would not exercise its discretion to provide the relief sought by the applicants. For these reasons, the outstanding claims of Messrs. Dionisio and Dias are dismissed, subject to the following exceptions.

The exceptions referred to at the end of paragraph 10 in the excerpt above relate to a claim for reimbursement for all legal costs incurred in the proceedings. That claim was subsequently dismissed by the Board (see *Universal Workers Union, Labourers' International Union of North America, Local 183*, 2007 CanLII 16260).

81. The circumstances faced by the Board in this proceeding are different in certain respects than those faced by the Board in *Universal Workers Union, Labourers' International Union of North America, Local 183*. Most notably, two of the applicants, Mr. O'Brien and Mr. Strazzanti, do not appear to have become employed by the Carpenters. I will return to that distinction below. However, the critical elements reflected by the two proceedings are similar. The most important determination made by the Board in *Universal Workers Union, Labourers' International Union of North America, Local 183* was that it did not make any labour relations sense to allow two former Local 183 Executive Board members to use a Board proceeding as a platform from which to exert or regain control over Local 183 while they sought to raid Local 183 bargaining units on behalf of their own construction union. Simply put, a conflict of interest existed that would be exacerbated should the relief sought from the Board be granted.

82. A similar concern arises in the instant case. Messrs. Terceira, Avero and Melo previously constituted three of the seven members on the Local 183 Executive Board. They have quite properly determined to take advantage of their name recognition and experience to secure employment with the Carpenters. Whether they have or have not secured that employment in order to satisfy an obligation to mitigate their losses, the fact remains that they are employed by a trade union that has raided the bargaining rights held by at least one local union chartered by the International. The Carpenters will undoubtedly seek to leverage the talents and attributes of Messrs. Terceira, Avero and Melo in the future against Local 183 and other locals chartered by the International.

83. In this application, Messrs. Terceira, Avero and Melo seek reinstatement to their employment with Local 183. They also seek an order setting aside the election results of June 18, 2011 and reinstatement to the Local 183 Executive Board, pending the completion of a fresh Executive Board election. If such a remedy were to be granted, an immediate and inevitable conflict of interest would arise. As the Board put it in *Universal Workers Union, Labourers' International Union of North America, Local 183*, above, Messrs. Terceira, Avero and Melo have "cast their lot" with the Carpenters, and their interests are now aligned with a trade union that competes for members and bargaining rights with Local 183, locals chartered by the International, and the International itself. If ordered, a new election would take many months to organize and complete. There is considerable mischief that could be undertaken by the applicants against Local 183 during the time period leading up to the second vote. In light of that potential conflict, even if the allegations in the complaint were established in their entirety, I

would not exercise my discretion to set aside the results of the election held on June 18, 2011 and reinstate Messrs. Terceira, Avero and Melo to their former positions on the Local 183 Executive Board. For that very same reason I would not reinstate those three applicants to their employment with Local 183.

84. I turn at this point to the incorporation by reference into this proceeding of the assertions of fact made by Local 183 in Board File No. 2388-09-U. By incorporating all of the allegations made by Local 183 in the prior proceeding into their complaint, the applicants have pleaded assertions of fact in this proceeding that extend as far back as 2007. There is no dispute that if the applicants had pleaded those assertions of fact directly into this complaint, and relied upon those assertions of fact for relief in this proceeding, the excessive delay in doing so would have properly resulted in the dismissal of most if not all of those allegations without a hearing. However, the applicants do not seek relief with respect to those allegations. Instead, they assert that those allegations are pleaded only for the purpose of establishing a pattern of activity on the part of the responding parties, in accordance with prior Board authority permitting reference in a current Board proceeding to such previous events for that limited purpose.

85. Significant consequences result from incorporating by reference into this proceeding the allegations of fact made in Board File No. 2388-09-U. The financial cost of relitigating the assertions previously made by the five applicants in their role as Executive Board members of Local 183 would be staggering, both for the parties to this proceeding and to the public purse. The effect of the delay in litigating the allegations is also troubling. Even if relief is not sought from the Board by the applicants with respect to the events pleaded in Board File No. 2388-09-U, the fact remains that many of those events occurred almost five years ago. The underlying motivation for actions taken by individuals that form the basis of that proceeding is the subject of vigorous dispute. The reputations of individuals who are said by the applicants to have acted improperly are at risk. As a result, there can be no doubt that the validity of the allegations made against those individuals in Board File No. 2388-09-U will become one of the major focal points of this proceeding, if not the major focal point, notwithstanding that the applicants seek no actual relief from the Board regarding those events. Given the breadth of the assertions made in Board File No. 2388-09-U, should this application be litigated to completion it is almost certain that the vast majority of the hearing days in this proceeding dedicated to calling evidence will be consumed calling testimony about events that are *not* the subject of a request for relief by the applicants.

86. I acknowledge the distinction drawn in the Board's jurisprudence that is relied upon by the applicants, and I agree that previous events do not "go away" simply as a result of the withdrawal of Board File No. 2388-09-U by Local 183 in July, 2011. However, I am of the view that the concerns identified by the Board in its jurisprudence regarding the effect of unnecessary delay in launching Board proceedings apply equally to situations in which the prior events are pleaded for the purpose of establishing a previous pattern of activity. Merely because no relief is sought from the Board relating to the assertions of fact made in Board File No. 2388-09-U does not mean that those assertions are made less seriously, or that the evidence regarding those assertions will be led casually, akin to background evidence often called at the outset of testimony. The applicants still seek the same findings of fact from the Board that Local 183 sought previously. Likewise, those accused of wrongdoing still seek the same findings of fact

that they sought from the Board. Simply put, the same interests of the parties that were in play when the assertions made in Board File No. 2388-09-U were initially litigated will be equally at play when this proceeding is litigated. The only differences will be that no actual relief will be sought in this proceeding relating to those allegations, and the events at the core of the dispute will have occurred so long ago that the ability of witnesses to recall those events in any meaningful way will have been severely compromised. In my view, those concerns are a factor that can be taken into account when determining whether I should exercise my discretion to proceed with the hearing of this application on the merits.

87. The length of time that it will take to relitigate the allegations of fact raised in Board File No. 2388-09-U creates another potential issue. Given the sheer number of facts in dispute, the large number of witnesses that will undoubtedly have to be called to testify to those facts, and the time required to prepare a decision regarding the issues in dispute in this proceeding, it is possible that this proceeding will not be finally determined until after the next election of the Local 183 Executive Board. The Elections Officer noted in his Report of Preliminary Investigation dated July 4, 2011 that under Canadian law, local union officers must be elected by the membership every 4 years. The next Local 183 Executive Board election is therefore slated for 2015.

88. It appears to me that, although there are more than three years remaining before the election of the next Local 183 Executive Board, it is inevitable that the next election will come and go before this proceeding is completed. An e-mail authored by Mr. Avero that is appended to the response filed by Local 183 to this proceeding highlights the potential length of this proceeding. As noted above, Board File No. 2388-09-U was filed with the Board on November 10, 2009. It appears from the materials in that Board File that the first day of hearing on the merits in that proceeding was February 9, 2010. Between that date and April 6, 2011 – a 14 month period – 15 hearing dates were held. More hearing dates were scheduled for October, 2011 when that application was withdrawn.

89. Mr. Avero, in an e-mail directed to the entire membership of Local 183 dated June 14, 2011, described the progress in Board File No. 2388-09-U to that date as "the halfway point of Phase 1 of the case" because "there are many more witnesses that have to take the stand and be cross examined". Mr. Avero notes in his e-mail that there is a Phase 2 of the case that he expects "would take maybe 3 times longer than the first part". Simple mathematics suggests that well over 100 hearing days will be necessary to establish the facts relied upon by the applicants that are pleaded in Board File No. 2388-09-U. Added to those hearing dates would be the dates required to hear the evidence with respect to the allegations made in this proceeding for which the applicants actually seek relief. Without doubt the evidence and argument in this proceeding will not be completed before the next Local 183 Executive Board election is held.

90. Once the commencement of the formal period for campaign activity for the election of the next Local 183 Executive Board is reached, I would not grant as a remedy to the applicants an order setting aside the results of the current Executive Board election, an order requiring another election of the Executive Board, or an order reinstating the five applicants to the Executive Board pending such an election. Members of Local 183 who seek leadership positions in the local would be unlikely to put their names forward to run for office if they thought there

was a chance that a hard-earned victory could be taken away from them by way of a decision of the Board in this proceeding. The governance of Local 183 by the Executive Board elected by the membership in 2015 ought not to be affected by a remedy issued in this proceeding.

91. Accordingly, in light of the breadth of the facts in dispute in this proceeding, and the passage of time that will inevitably result over the course of its litigation, it is almost certain that the most important relief sought by the applicants will become moot during the course of the litigation. It makes little sense to commence litigation when the relief sought by the applicants will become unavailable before that litigation is completed.

92. In addition, I would not award the applicants with most of the remaining relief they seek in this application.

93. The applicants seek an order for reinstatement in employment of "all employees terminated by the responding parties" contrary to the Act. It is well-established that the Board will not reinstate to employment those individuals who have not appeared before it to seek reinstatement (see, for example, *Universal Workers Union, Labourers' International Union of North America, Local 183*, [2007] OLRD No. 520, at paragraph 9, and *Centennial Electric Ltd.*, [2009] OLRB Rep. May/June 352, at paragraph 8). Accordingly, to the extent that the applicants seek relief from the Board relating to strangers to this litigation, such relief is unavailable to the applicants.

94. The claim by the five applicants for damages equivalent to their legal expenses is unavailable to parties engaged in Board proceedings (see the discussion in *Bellai Brothers Ltd.*, [1994] OLRB Rep. January 2, at paragraphs 49 to 58 inclusive, and in *Universal Workers Union, Labourers' International Union of North America, Local 183*, 2007 CanLII 16260). In addition, the claim made by the five applicants for "aggravated and punitive damages" from Local 183 and the International to compensate them for "unlawful and high handed conduct and flagrant violations of the Act" is a remedy that is unavailable to the applicants. It is by now a well-established principle that damages ordered by the Board are compensatory in nature. The Board does not award punitive damages (see, for example, *Radio Shack*, [1979] OLRB Rep. December 1220, application for judicial review dismissed, (1980), 30 O.R. (2d) 29 (Div. Ct.)). The Board has also previously determined that it does not award punitive remedies in the form of aggravated damages (see *Brick and Allied Craft Union of Canada*, 2001 CanLII 19624 (ON LRB)).

95. What relief is left for the applicants should they establish, at the completion of long, expensive and complicated litigation, that one or both of the responding parties has violated section 72, 76, 87 or 149 of the Act? A declaration that that one or both of the responding parties has violated the Act, an order directing that that responding party stop violating the Act, and an order for compensation for all losses incurred by the applicants as a result of the unlawful conduct of the responding party in question, including lost salary and benefits, expenses and interest. It will be recalled here that three of the five applicants have, at least to some extent, mitigated their financial losses by securing employment with the Carpenters. However, if the applicants were successful against one or more of the responding parties after litigating this

proceeding, it is possible that they could secure some financial compensation from the particular responding party in question, depending upon the claim that they establish.

96. It is at this stage that the Board must consider, as the Chair of the Board put it in the *Wal-Mart Canada* decision (at paragraph 77), "whether engaging in lengthy proceedings about these past events is worth it". After giving the situation considerable thought, I have concluded for the reasons set out above that engaging in an extremely lengthy hearing on the issues defined by the applicants in order to potentially secure for them some financial compensation should they be successful is simply not worth the overwhelming financial cost to the parties and to the Board, including the unquantifiable but undoubtedly significant opportunity costs incurred as a result of the large number of hearing dates that would be required to litigate the many hundreds of paragraphs of allegations relied upon by the applicants in their application.

97. I return to the situation faced by Mr. O'Brien and Mr. Strazzanti. There has been no suggestion that either Mr. O'Brien or Mr. Strazzanti has secured employment with the Carpenters or with any other employer with interests contrary to those of Local 183 or the International. They do not have the same conflict of interest identified above that affects Messrs. Terceira, Avero and Melo. Should they be entitled to proceed together with this application, with the dismissal of the application only as against Messrs. Terceira, Avero and Melo?

98. In my view, the answer to that question is "no". Although the concerns arising from the potential conflict of interest applicable to Messrs. Terceira, Avero and Melo have no application to Messrs. O'Brien and Strazzanti, all of the other considerations identified above that favour the exercise of the Board's discretion to dismiss this application remain. It was not suggested during the course of argument by counsel acting for the applicants that Messrs. O'Brien and Strazzanti were prepared to proceed with this application in the absence of the other three applicants. Nor was it suggested at any time that the applicants were prepared to sever from this application the allegations made in Board File No. 2388-09-U. At all times the approach adopted by the applicants reflected a position that the litigation of this proceeding was an "all or nothing" proposition.

99. In *Toronto Hydro Corporation*, cited above, the Chair of the Board, after concluding that lengthy litigation in the circumstances of that proceeding would not serve any labour relations purpose, observed near the end of his decision that it was time for the parties to that proceeding to move on, and to end the litigation of old wounds or grievances. In my view, that sentiment is equally applicable in this proceeding.

100. Political turmoil has dogged Local 183 for more than a decade. In fact, it has become a perpetual state of affairs. Recent history reflects that the current leadership of Local 183 at any given time spends much of their time and a considerable amount of their financial resources defending themselves from assertions of wrongdoing made by the previous leadership of Local 183, for no meaningful purpose beyond the political interests of those instigating the litigation. Here, the factual allegations made in Board File No. 2388-09-U are many years old. In the world of labour relations, those allegations are for all intents and purposes ancient history, so dated that they ought not to be the focus of current labour relations litigation. Furthermore, there is no valid labour relations purpose to be served by litigating those allegations. The only practical

result of this application should it be litigated to completion will be that all of the parties will have borne the costs of litigation that has become moot.

101. For the reasons set out above, I exercise my discretion pursuant to section 96(4) of the Act to not inquire into this application.

(d) Lack of Standing

102. Having regard to the conclusion reached above with respect to the exercise of the Board's discretion, there is no need for me to address the argument made by the responding parties that the applicants lack standing to bring this application.

V. Disposition

103. This application is dismissed.

3743-10-OH Winston H. Gregory, Applicant v. **Estée Lauder Cosmetics Limited**, Responding Party.

Health and Safety – Settlement – An application was made by an employee pursuant to Section 50 of the *Occupational Health and Safety Act* – An oral agreement in principle was reached – The employee's counsel sent a letter to the Board requesting the scheduled hearing date be adjourned because an "agreement in principle" had been reached – However, the employee disagreed with some of the terms of the drafted settlement and did not sign the Minutes of Settlement – The employee retained new counsel and sought to have the matter re-listed – The employer argued that the matter had been settled – The employee submitted subsection 96(7) of the *Labour Relations Act* required a binding settlement agreement to be in writing and to be signed by the parties or their representatives – The Board found that section 50(3) of the OHSA gives the Board discretion to decline to inquire into a complaint – This discretion is not qualified by subsection 96(7) of the LRA, which provides an enforcement mechanism for settlements – The Board noted that even an oral settlement may result in the Board declining to inquire further into a complaint – The Board found the matter had been resolved by the parties, as confirmed by the letter sent to the Board by the original counsel for the employee – Counsel can bind a client to a settlement unless the client has limited his or her authority and the opposing side has knowledge of the limitation – There was no reason for the Board to look behind the settlement – The Board exercised its discretion not to inquire further into the complaint because it had been settled – Application denied

BEFORE: *James Hayes*, Vice-Chair.

DECISION OF THE BOARD: March 28, 2012

1. This is an application made pursuant to Section 50 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended (the "Act") by Winston Gregory ("Gregory") concerning Estée Lauder Cosmetics Limited (the "respondent").

2. The respondent alleges that the matter has been settled which allegation is denied by Gregory.

3. By decision dated October 6, 2011 the Board directed that the parties provide submissions concerning this issue which has been done. By decision dated November 24, 2011 the Board expressed the opinion that a further meeting with a Labour Relations Officer should take place before a decision is made. That meeting has taken place without further resolution of the issue.

4. I am of the view that this matter may be decided on the basis of the written submissions which have been filed.

5. Gregory retained new counsel, Mr. Martinez, following the date of the alleged settlement. Gregory had previously been represented by John Bartolomeo of the Toronto Workers' Health & Safety Clinic.

6. What is not in dispute is that attempts to resolve the case were made in advance of the scheduled Board hearing date of September 22, 2012.

7. Gregory pleads the following:

> In September 2011, headway was made with respect to potential settlement. An oral agreement in principle was reached on September 8, 2011, and on that same date Chris Foulon (then counsel for the Responding Party) prepared and delivered draft copies of the Minutes of Settlement and the Full and Final Release to Mr. Bartolomeo. At this time Mr. Foulon also invited "questions or concerns" from Mr. Bartolomeo with respect to both of these documents.
>
> On September 9, 2011, Mr. Bartolomeo indicated some of Mr. Gregory's concerns to Mr. Foulon with respect to the letter confirming employment. On that same day a revised draft of the letter confirming employment and an additional draft copy of the Minutes of Settlement were prepared and delivered to Mr. Bartolomeo. Mr. Foulon again invited "questions or concerns" from Mr. Bartolomeo with regard to the documentation being proposed as a means of developing the oral agreement in principle into a binding settlement.
>
> Also on that same day, September 9, 2011, Mr. Bartolomeo confirmed to the Board that an agreement in principle had been reached. At this stage, however, Mr. Gregory had not agreed to the terms in the Minutes of Settlement or to those in the Full and Final Release. In fact, in Mr. Gregory's conversations with Mr. Bartolomeo the following week, Mr. Gregory expressed his disagreement with the

> lack of behaviour modification terms, the confidentiality clause and the lack of admissions on the part of Estee Lauder.
>
> On September 14, 2011, the Board confirmed that the hearing set for September 22, 2011, would be adjourned as a result of the agreement in principle reached between the parties.
>
> On September 16, 2011, Mr. Bartolomeo again indicated some of Mr. Gregory's concerns to Mr. Foulon via telephone. On that same day a revised draft of the letter confirming employment was prepared and delivered to Mr. Bartolomeo.
>
> On September 19, 2011, after numerous conversations between Mr. Gregory and Mr. Bartolomeo, Mr. Bartolomeo wrote to Mr. Foulon and to the Board to indicate that the Applicant would not be signing the Minutes of Settlement. He also indicated that the Toronto Workers' Health & Safety Legal Clinic would no longer be providing representation to Mr. Gregory.
>
> Mr. Bartolomeo followed-up by writing a closing letter to Mr. Gregory in which he stated that he only thought that they were "close to settlement".
>
> In subsequent phone calls between Mr. Foulon and Shane Martinez (new counsel of record for Mr. Gregory), Mr. Martinez explained that Mr. Gregory's concerns with the terms of settlement covered a range of issues, including (but not limited to) the confidentiality clause and the lack of behaviour modification terms. Mr. Martinez also reiterated Mr. Gregory's openness to the possibility of renewing settlement negotiations with Estée Lauder prior to a new hearing.

8. On September 9, 2011 Mr. Bartolomeo sent a letter to the Board which included the following: "With the consent of the Responding Party, I am writing to request that the hearing scheduled for 22 September 2011 be adjourned. **The parties have reached an agreement in principle.** As such, I ask that the hearing date be adjourned." (emphasis added).

9. Gregory submits that subsection 96(7) of the *Labour Relations Act* requires that there be two requisite elements to a binding settlement—that it be in writing and that it be signed by the parties or their representatives. He submits that both of these elements are lacking and relies upon the subsequent dialogue between counsel concerning specific terms of the settlement which were not resolved to the satisfaction of Gregory. He says that this dialogue indicates that no binding settlement was reached as opposed to an agreement which was still subject to modification and approval by either side.

10. Gregory relies upon the following authorities: *1086289 Ontario Inc. c.o.b. as Urban Electric Contractors*, 2002 CanLII 3442 (ON LRB); *Sidcock v. United Steelworkers of America*, 2003 CanLII 21632 (ON LRB); *International Association of Bridge, Ornamental and Reinforcing Ironworkers, Local 721 v. Flynn Canada Ltd.*, 2009 CanLII 24162 (ON LRB).

11. In my opinion this case falls to be determined for the same reasons provided in *Nicholas v. Fuji Hunt Photographic Chemicals Ltd.*, [1993] OLRB Rep. June 494, a case cited by counsel for the respondent.

12. Counsel for Nicholas made the same submission which is made by Gregory. As described at paragraphs 23 and 24 of *Nicholas*:

> Counsel for Nicholas submits that section 91(7) of the Labour Relations Act, which is incorporated into the *Occupational Health and Safety Act*, requires settlements to be in writing. Where, as in this case, there are no minutes of settlement, there is no settlement. Counsel does not dispute the law regarding a solicitors' ostensible authority on behalf of a client, but submits that it ought not to prevail in the face of the clear statutory language. In effect, counsel is urging the Board to find that even if counsel for the parties understood there to be a binding settlement, the settlement ought not to have force unless the client has clearly agreed to it.
>
> Counsel also submits that there was no agreement to settle on December 10 because some matters were not clearly settled. For instance, Harris testified that when he agreed to the provision of "normal releases", he understood that there would be mutual releases exchanged between the parties. Gale testified that he understood this to mean that Nicholas would execute a release in favour of the responding parties.

13. The Board in *Nicholas* said the following:

> ...
>
> **26** Section 50(3) of the *Occupational Health and Safety Act* ("the OHSA") states:
>
>> (3) The Ontario Labour Relations Board MAY inquire into any complaint filed under subsection (2), and section 91 of the Labour Relations Act, except subsection (5), applies with all necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act.
>>
>> [emphasis added in upper case text]
>
> **27** Section 91(4) of the *Labour Relations Act* ("the LRA") states in part:
>
>> 91.-(4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board MAY inquire into the complaint of a contravention of this Act ...
>>
>> [emphasis added in upper case text]

28 Section 91(7) of the *Labour Relations Act* provides:

> 91.-(7) Where a proceeding under this Act has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1).

29 Section 174(6) of the *Environmental Protection Act* ("the EPA") states:

> (6) Where the labour relations officer is unable to effect a settlement of the matter complained of, the Board may inquire into the complaint.

30 The wording of section 50 of the OHSA, section 174(6) of the EPA, and section 91 of the LRA provide a discretion to the Board to decide whether or not to inquire into a complaint. In previous cases before the Board, the Board has refused to inquire, for example, where there has been undue delay in filing a complaint, or where the parties have settled a complaint. In Graham Smith, [1991] OLRB Rep. Oct. 1204, a complaint under section 85(2) [now 87(2)] of the Act, the Board concluded that the matter had been settled and exercised its discretion to decline to inquire further into the complaint. The Board's finding was made in the absence of any documents executed by the parties confirming the settlement. On the subject of settlements in general, and settlements which are not in writing, the Board stated:

> 7. The Board has in its jurisprudence attempted to encourage settlement by ensuring that settlements will be reliable and final endings to the applications or complaints before it. In *Tony Hoosain*, [1987] OLRB Rep. Dec. 1513 the Board had this to say on the subject:
>
>> Each year, trade unions, employees, or employers file hundreds of applications or complaints before the Board. A great majority of them are settled. Sometimes the settlement favours a trade union or the employer. Sometimes it may favour an employee. Usually the settlement represents a compromise under which the

> parties neither achieve as much nor risk as much as they would by proceeding to a hearing before the Board. The parties generally arrive at a settlement in order to avoid the cost and uncertainties of litigation. Both the orderly resolution of Board proceedings and the efficacy of the settlement process would be gravely prejudiced if, having signed minutes of settlement, a party could afterwards repudiate that settlement and revive the original proceedings because s/he later had second thoughts about the settlement terms.
>
> 8. In that case, the settlement was in writing. However, the Board has made it clear that even an oral settlement may result in it declining to inquire further into a complaint. For example, in *Madeleine Cloutier*, [1988] OLRB Rep. Apr. 375, the Board said as follows:
>
> > One of the distinguishing features of labour relations is that it operates in the context of continuing relationships. For that reason, among others, settlements are particularly desirable and the Board has accorded considerable priority to efforts towards this end. It is also essential that the Board's jurisprudence provide a legal climate which encourages and reinforces this goal. If parties to labour litigation cannot rely on their agreements, the Board's settlement processes may be rendered almost worthless. With respect to section 89 complaints, the Board has noted in the past that it has a discretion with respect to its inquiry. It has also declined to proceed further with a complaint in the exercise of that discretion where the parties have reached a settlement. (See, for example, C.E. Jamieson & Co. (Dominion) Limited, [1985] OLRB Rep. March 375).
>
> 9. The basis of the Board's discretion under section [91] is the permissive wording contained in section [91(4)] to the effect that "the Board MAY inquire into the complaint" (emphasis added in upper case text). Section [87(2)] contains identical wording, and we conclude that we have a similar discretion with respect to complaints filed under that section. There is no question as well that the Board's policy considerations with respect to encouraging settlement and promoting orderly and final resolutions of cases are as compelling in these circumstances as in cases brought under section [91].

31 As well, in *H. John Barnes*, [1992] OLRB Rep. June 668 the Board found a settlement in a complaint under section 91 even in the absence of a formal settlement document. We do not read the provisions of section 91(7) to mean that agreements to settle a complaint which are not reduced to formal minutes will have no

> effect between the parties. In our view, the purpose of section 91(7) is primarily the provision of an enforcement mechanism for settlements. It does not qualify the Board's discretion under section 91 to decline to inquire into a complaint. Where there has been an agreement to settle the complaint, whether or not this agreement has been set down in writing, there are sound policy reasons to exercise our discretion not to inquire further.

. . .

14. The Board in *Nicholas* also relied upon *Scherer v. Paletta,* [1966] 2O.R. 524 (Ont. CA) for the proposition that, subject always to the discretionary power of the Court, a solicitor whose retainer is established in the particular proceedings may bind a client by a compromise of proceedings unless the client has limited his or her authority and the opposing side has knowledge of the limitation.

15. In the instant case, there is no dispute that counsel for Gregory advised the Board "with the consent of counsel for the Responding Party" in writing that an "agreement in principle" had been reached.

16. As discussed in *Nicholas,* subsection 96(7) provides primarily for an enforcement mechanism for settlements. It does not qualify the Board's discretion to decline to inquire into a complaint as permitted by subsection 50(3) of the OHSA.

17. On the undisputed facts and the authorities cited above, I find that this matter was resolved by the parties as was recorded by counsel for Gregory in his letter to the Board dated September 9, 2011. The Board sees nothing in the facts pleaded by Gregory which would cause it to look behind that settlement.

18. Accordingly, the Board will not inquire further into this complaint because it has been settled.

2642-11-HS IBEW Local 530, Applicant v. **Gil & Sons Limited** and Fil Savoia, Regional Director, Responding Party v. First Solar Development (Canada) Inc., Intervenor.

Health and Safety – The issue under appeal was whether the receptacle portion of a specific solar energy connector was a "convenience receptacle" within the meaning of s. 182 of the Construction Regulations – If not, then only a certified electrician or apprentice could connect the connector – The inspector's order did not require an electrician to perform the task; the IBEW appealed – In the Board's view, the connector was significantly different than a convenience receptacle: both the plug and receptacle are finger safe; an audible clicking noise concludes the connection; once the connection is effected, it is locked, and can be safely immersed in water; and the connector bears a printed warning that it should not be disconnected while under load – The Board found that the specialized skill of an electrician is not required to perform the work safely – Appeal denied

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Ron Lebi* and *Mick Cataford* appearing for the applicant; *John Salisbury* appearing for Gil & Sons Limited; *Steven Succi, Brian Fukuzawa, Juan Clavijo, Wayne De L'Orme* and *Robert Wrigley* appearing for the Regional Director; *John Illingworth, Peter Carrie* and *Tom Kosnik* appearing for the intervenor.

DECISION OF THE BOARD: March 30, 2012

1. This is an appeal under section 61 of the *Occupational Health and Safety Act*.

2. The issue in this appeal is whether the receptacle portion of an "MC4 Plug In Connector" is a "convenience receptacle" within the meaning of section 182 of the "Construction Projects" regulation (O. Reg. 213/91, as amended) under the Act (the "Regulation"). If it is not, then only a certified electrician or apprentice electrician may connect an MC4 Connector. Juan Clavijo, an Inspector under the Act, determined that the work did not have to be performed by a certified electrician or apprentice electrician. IBEW Local 530 appeals from this determination.

3. Having regard to paragraph 4 of section 61(2), the style of cause is corrected by deleting "Juan Clavijo, Inspector" as a party and substituting "Fil Savoia, Regional Director".

4. This matter was heard by means of a consultation process, as contemplated by Rule 41 of the Board's Rules of Procedure. As a result, the hearing was completed in one day. There were no disputes with respect to almost all of the facts upon which any party sought to rely. There were a few facts which initially appeared to be in dispute. Those disputes were resolved through discussions between the parties mediated by the Board. At the conclusion of this process there were no material facts in dispute and no need to hear evidence.

5. I note that while a representative appeared on behalf of Gil and Sons Limited, at the outset of the hearing he indicated that he did not intend to make any representations on its behalf.

The Facts

6. First Solar Development (Canada) Inc. was the constructor of a solar energy power generation project in Mooretown, Ontario (the project has now been completed). Such projects are sometimes referred to as "solar farms". Gil & Sons was a contractor on the site. Gil & Sons has a collective agreement with the IBEW. The IBEW referred a "permit worker" to the site to perform work for Gil & Sons. The permit worker was not a certified electrician or apprentice electrician. An incident occurred on October 25, 2011 involving the permit worker, which is described in greater detail below. First, however, it is useful to describe the nature of the solar farm and the work being performed by the permit worker.

7. A solar farm consists of one or more arrays of photovoltaic panels supported by a system of racks (which First Solar refers to as "tables"). Prefabricated photovoltaic modules are brought to the site. They are mounted upon racks which have been assembled on site. Each

module has two cables attached to it, referred to as "flying leads". There is a positive flying lead and a negative flying lead.

8. The flying leads consist of a single multi-strand copper wire, with two coatings: around the wire is an insulator; around the insulator is a weatherproof cover. The cable is rated to 1,000 volts. The positive flying lead terminates in a plug; the negative flying lead terminates in a receptacle. The plug on the end of the positive flying lead consists of a metal pin encased in a housing. The receptacle for the pin on the end of the negative flying lead is also made of metal and also encased in a housing. It is not possible to touch either the metal pin or the metal receptacle: they are "finger safe". The receptacle on the negative flying lead from one module will receive the plug on the positive flying lead from the adjacent module, that is, the plug is inserted into the receptacle.

9. Collectively, the plug and receptacle at the end of the flying leads are known as an MC4 Plug In Connector (First Solar also refers to them as a "PV Module Plug and Play" connector). The MC4 Connector was specifically developed for the photovoltaic industry: it is the standard connector for photovoltaic panels used worldwide in the solar panel industry. They may be purchased by consumers at retail building supply stores for the purposes of home installation.

10. The plugs and receptacles of MC4 Connectors are designed in such a way that when a plug is inserted into a receptacle they lock together with an audible clicking sound. A special tool is required to unlock them. The plugs bear a printed warning which reads: "Do not disconnect under load". The term load means that there is current flowing through the cable. Both the locking feature and the notice are prescribed by the *Canadian Electrical Code*. Once connected, an MC4 Connector is rated as safe if immersed in water. There is also a sleeve that goes over the MC4 Connector after the ends have been connected.

11. On this project, the racks supported four rows of modules arranged so that from above the modules appear to be in columns. Nine modules in a row were connected to each other in series to form a "string", which is also sometimes referred to as a "panel". An "array" of four rows by nine columns was created by connecting four strings in parallel: the negative flying leads at the end of each string were connected to a harness. The harness is a cable (with the same characteristics as the cables which make up the flying leads) with 4 "T fittings". Each T fitting terminates in a plug that is the same as the plugs on the positive flying leads. Those plugs were inserted into the receptacles on the negative flying leads at the end of each string.

12. It is the nature of a solar module that once it is exposed to light it becomes an electrical device generating Direct Current, or DC, electricity. The modules used in this project each generate up to between 48 and 56 volts of DC electricity. Since a string consisted of nine modules linked up in series, the string generated nine times the amount of electricity as a single module, i.e. between 432 and 504 volts. Since the strings in an array were connected in parallel, the overall voltage of the array remained the same as a string: 432 to 504 volts.

13. The harnesses from the arrays go to a "jumper". The jumpers go to a combiner box which combines them all together. That work involves stripping cable and a screw driver: it is

not the work which is the subject of this appeal. For completeness I note that from the combiner the power goes to a converter. The converter converts the power from DC to Alternating Current, or AC.

14. This project was designed so that there would be four arrays. It is important to note that there is no separation between the arrays. That is, there are 36 modules in a row on the rack with no greater physical separation between, for example, the eight and ninth module which were to complete one string and the tenth module which was to commence the next string.

15. On October 25, 2011 the permit worker experienced an electrical shock while plugging the plug of an MC4 Connector into the receptacle of an MC4 Connector: specifically, he was plugging one of the plugs on a harness into a receptacle at the end of a string. There were a number of factors which contributed to this incident. The area was extremely muddy and wet and it was raining at the time of the incident. The worker was seated on a plastic bucket and, although he was wearing rubber boots, his boots and the base of the bucket were immersed in a pool of water. The worker was wearing Kevlar gloves which were wet. The cables were abraded. The worker was sitting in close proximity to the steel structure of the racking system. The worker had incorrectly connected the second group of 9 modules in a row to the third group of 9 modules so that 18 modules were connected in series. The parties agree that if these factors had not been in existence, the worker would not have received a shock while connecting the MC4 Connector.

16. The theoretical voltage of 18 modules connected in series was calculated by an Electrical Engineer for the Ministry of Labour as 1098 volts. First Solar did a calculation taking into account factors such as the abrasion of the cables and concluded that in the circumstances the string of 18 modules had a voltage of 540. The IBEW states that it does not matter: anything over 42.4 volts can create a shock which is potentially fatal.

17. The incident was reported to the Ministry of Labour and investigated by Inspector Clavijo. He made two orders: Gil & Sons was ordered to ensure that workers used rubber gloves that are adequate to protect against electrical shock and burn; First Solar was ordered to ensure that every employer and every employer working on the project complied with the Act and the regulations, and specifically that Gil & Sons complied with the order issued against it. The Inspector noted that both Gil & Sons and First Solar were in compliance at the time of the field visit.

18. First Solar did its own investigation of the incident and adopted a number of new procedures designed to increase the safety of workers performing the work: table markers were to be used under the tables (i.e. racks) to identify the harness locations before "plug and play" occurs; the harnesses and jumpers were to be physically examined for cuts and insulation damage by a trained installer before they were tie wrapped to the table rails; workers were to wear dry Class 00 rubber gloves with protectors when "plugging and playing"; two workers were to work on harness at a time to verify each other's work; if more than 9 modules were found connected in a series, workers were to bring it to the attention of their supervisor.

19. As noted, the Inspector also found that the work in question did not need to be done by a certified electrician or apprentice electrician, as section 182(2) of the Regulation applied. It is this conclusion which the IBEW challenges on this appeal. It remains the position of First Solar and the Director that the work need not be done by a certified electrician or apprentice electrician.

20. The IBEW notes that the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario, The International Brotherhood of Electrical Workers and The IBEW Construction Council of Ontario have entered into a Letter of Understanding with respect to "Solar Photovoltaic Electrical Generating Plants (Solar Farms)". It asserts that the Letter of Understanding provides that the work in question must be performed by a certified electrician or an apprentice electrician. Thus, it argues, this is work which it "already has". Nonetheless, the IBEW is not before the Board on a grievance alleging a breach of the collective agreement to which Gil & Sons is a party. Rather, the IBEW is before the Board on an appeal which raises a question of statutory interpretation of the Regulation. The IBEW acknowledges that whatever rights it may have as a result of the Letter of Understanding does not answer the question of statutory interpretation, and that the agreements of the collective bargaining parties should not influence the Board in the determination of the issue before it.

21. The position of the IBEW, more fully developed below, is that a "convenience receptacle" for the purposes of the Regulation is a receptacle of the sort that would normally be found in an office or home designed to receive a standard 2 prong or 3 prong plug (I will refer to this as a "standard receptacle"). There are a number of features of standard receptacles which distinguish them from the receptacle on an MC4 Connector. First, the 2 or 3 prong plugs which they are designed to receive have 2 or 3 wires, compared to the single wire which runs to an MC4 Connector plug. The 2 wires on a 2 prong plug are a neutral and a live wire. The 2 blades on a 2 prong plug are of different sizes: the bigger blade is associated with the neutral wire. The different sizes of the blades mean that a 2 prong plug can only be inserted into the standard receptacle in one direction. The 3 blades on a 3 prong plug mean that it also can only by inserted into the standard receptacle in one direction. The 3 wires for a 3 prong plug are a neutral, a live and a ground. The ground wire goes to a prong which is longer than the others and therefore is the first to make a connection when inserted in the standard receptacle and the last to break the connection when removed, which is in itself a safety feature. On the receptacle side there are also differences. As previously discussed an MC4 receptacle has only one wire. A standard receptacle has 3 wires: a neutral, a live and a ground.

22. First Solar and the Director point out that unlike an MC4 plug, the blades on standard plugs are not encased in a housing. That is, it is possible to touch those blades: they are not finger safe. They also point out that unlike an MC4 Connector, the connection formed by a standard plug and receptacle: does not lock together; is not waterproof; and does not bear a warning not to unplug under load.

23. The amount and nature of the power carried by a standard receptacle also differs from an MC4 receptacle. A standard receptacle is designed to carry 120 volts of AC power; an MC4 receptacle is designed to carry 600 volts of DC power. For an equivalent voltage, DC power is more hazardous than AC power, provided that there is a load (i.e. current flowing). This means

that there is greater hazard associated with disconnecting a DC connection. There may also be a hazard associated with connecting a DC connection if the circumstances are such that the person making the connection creates the load. This was the case during the incident on October 25, 2011. There is no suggestion that if reasonable procedures are followed, such as those adopted by First Solar following the incident, that a load will be created by the worker making the connection. That is, the act of connecting an MC4 Connector is not in and of itself hazardous.

24. First Solar notes that there are a large number of AC receptacles, including those designed to receive standard household stove plugs, which carry 220 volts and those which are designed to receive welder plugs, which carry 600 volts phase to phase and 347 volts phase to ground. Each of these receptacles looks different than a standard receptacle. A welding plug receptacle generally also includes a locking mechanism, as the plug is twisted when it is inserted.

Analysis and Decision

25. As noted, O. Reg. 213/91 contains the "Construction Projects" regulation of the Act. Sections 181 to 195.3 specifically address "Electrical Hazards". Section 182 of the Regulation provides:

> **182.** (1) No worker shall connect, maintain or modify electrical equipment or installations unless,
>
> (a) the worker is an electrician certified under the *Trades Qualification and Apprenticeship Act*; or
>
> (b) the worker is otherwise permitted to connect, maintain or modify electrical equipment or installations under the *Trades Qualification and Apprenticeship Act*, the *Apprenticeship and Certification Act, 1998* or the *Technical Standards and Safety Act, 2000*.
>
> (2) A worker who does not meet the requirements of clause (1)(a) or (b) may insert an attachment plug cap on the cord of electrical equipment or an electrical tool into, or remove it from, a convenience receptacle.

26. The IBEW accepts that an MC4 plug is "an attachment plug cap" within the meaning of the Regulation. It also agrees that an MC4 receptacle is a "receptacle", which is a term of the trade. It argues, however, that it is not a "convenience receptacle". The term is not defined by the Regulation. That term, the IBEW asserts, is restricted to a standard 120 volt receptacle described earlier in this decision. The IBEW advances in essence three arguments in support of this position.

27. First, the IBEW notes that what is at issue is an exemption to a general provision which prohibits the performance of electrical work by anyone other than a certified electrician or apprentice electrician. Exceptions should be narrowly construed.

28. Second, the IBEW argues that the proper meaning of the term "convenience receptacle" in the exception contained in section 182 can be gleaned from the predecessor to that section contained in O. Reg. 659/79, the original regulations promulgated under the Act in relation to Construction Projects. Section 100 of that regulation read:

> Except where the connection is made by inserting an attachment plug cap on the cord of the electrical equipment or tool into a convenience receptacle, only a worker who is an electrician certified under the *Apprenticeship and Tradesmen's Qualifications Act* or a worker who is similarly qualified by training and experience shall connect any electrical equipment or tool to a power source or disconnect any electrical equipment or tool from a power source.

The IBEW notes that the prohibition in the original regulation is differently worded than the current Regulation, but that the exception has the same wording. The effect of the exception in the original regulation was that a worker on a construction site who was not an electrician could plug a tool into a power source without waiting for an electrician: that was what plugging into a convenience receptacle meant. Since the same wording is used for the exception in the current Regulation, the IBEW argues that it must be interpreted in the same way.

29. Third, the IBEW argues that this limited exception is practical and consistent with the norms of the construction industry, in which workers other than electricians plug electrical tools in all the time in order to obtain AC power to operate those tools. By contrast an MC4 receptacle relates to DC power, which is inherently more dangerous than AC power, and at a voltage which is significantly higher than that provided by a standard receptacle. The greater danger associated with the use of an MC4 receptacle is reflected in the fact that the *Canadian Electrical Code* prescribes both a locking mechanism and a printed warning for an MC4 Connector. An MC4 connection is made not to obtain power so that a worker may perform other work; rather it is made as part of the process of making wiring connections to create a power generating device. That is inherently the work of an electrician.

30. I am not persuaded by these arguments for many of the reasons advanced by First Solar and the Director.

31. First, the exemption refers not to "electrical tools", but to "electrical equipment or tools". It is not, therefore, restricted to the types of power tools commonly used in the construction industry. There is no dispute that the modules, strings and arrays in question constitute electrical equipment.

32. Second, if the intention had been to restrict the exemption to receptacles related to a "power source" as appears to have been the case with the original regulation, it would have been easy to import the words "power source" from the wording of the original regulation. They were not. Reference to the original regulation, therefore, if anything supports the inference that the exemption in the current Regulation is meant to have broader application. Nor is there anything else in the current regulation which suggests that the direction in which the power is flowing is of any consequence. There is also nothing in the current Regulation which suggests that either

the prohibition or the exemption are limited to power sources rather than the interconnecting of wiring to make a circuit.

33. Third, and in any event, it is not clear that the words "power source" in the original regulation have any bearing on the meaning to be given to the term "convenience receptacle". Convenience ordinarily connotes ease of use. A convenience receptacle is one that is designed to accept a plug cap without any further work in order to effect the connection. The hazards associated with such other work are thus avoided by the design of the plug and the receptacle themselves.

34. Fourth, it is not clear how the interpretation urged by the IBEW would advance the purposes of the Act: the promotion of health and safety. In this respect I note that the IBEW expressly states that it does not argue that the work is dangerous or hazardous and therefore only an electrician can do it; rather its argument relates only to the words of the Regulation.

35. The Board has in fact had occasion to interpret what the predecessor of what is now section 182 of the Regulation, albeit within the context of a jurisdictional dispute. In *Babcock & Wilcox Industries Ltd.*, [2004] OLRB Rep. Jan./Feb. 6, the work at issue involved the installation of stringers, described at paragraph 5 of the decision as "a length of insulated electrical wire with a plug at one end, and usually holding 10 to 12 light fixtures along the length of the fixture". The stringers were fabricated off site. The IBEW claimed the work of moving the stringers, connecting them to electrical receptacles or extension cords, and hanging them when needed. The Board addressed the IBEW's argument that safety and the application of the *Occupational Health and Safety Act* favoured the assignment of the work to it as follows (in relevant part):

> **24.** The IBEW made much of its contention that the Occupational Health and Safety Act and the Canadian Electrical Code, in their view, requires this work to be performed by a certified electrician. This factor is, I conclude, overstated. Section 181 of O. Reg. 231/91 [sic: O. Reg. 213/91] under the Occupational Health and Safety Act states:
>
> > **181.** (1) No worker other than an electrician certified under the Trades Qualification And Apprenticeship Act to do electrical work or a person with equivalent qualifications by training and experience shall connect, maintain or modify electrical equipment or installations.
> >
> > (2) Subsection (1) does not apply to work performed in compliance with section 183.
> >
> > (3) A worker without the qualifications described in subsection (1) may insert an attachment plug cap on the cord of electrical equipment or tool into, or remove it from, a convenience receptacle.
>
> Clearly, section 181(3) covers this work and a certified electrician is not required to perform the work in dispute.

> **25.** That is not to say that electrical equipment carrying a live charge does not raise safety concerns. As anyone who has ever touched a "live wire" in his or her own home knows, this is a matter that requires some care. However, in this case, I conclude that the specialized skill of an electrician is not required to perform the work safely. Stringers are, after all, sealed units. Workers should not be handling any uninsulated wire, nor does the work require them to do so. Connections are made with a plug into a receptacle, not by joining wires together. While care must be taken in the handling of any electrical wire to ensure it does not split or the insulation is not scraped off, that level of knowledge and care would be available to any employee who works with power tools. If the boilermakers plug in fans with sufficient care, they can presumably plug in stringers with sufficient care.

I note that before me the IBEW seeks to distinguish *Babcock & Wilcox Industries Ltd.* on the basis that it dealt with plugging the stringers into a power source whereas the present case involves the interconnecting of wiring to make a circuit. For the reasons already stated, in my view this is a distinction without a difference.

36. In this case, the MC4 Connector consists of a uniquely designed MC4 plug which can only fit into the uniquely designed MC4 receptacle. No special expertise is required in order to effect the connection. It is in fact safer than plugging a plug into a standard receptacle in that: both the MC4 plug and the MC4 receptacle are finger safe; a worker is alerted to whether the connection has been effected by the presence or absence of an audible clicking noise; once the connection is effected it is locked; once the connection is effected it may be immersed in water; and the MC4 Connector bears a printed warning that it should not be disconnected while under load. The specialized skill of an electrician is not required to perform the work safely.

37. Fifth, the interpretation urged by the IBEW would give rise to anomalous if not absurd results. There are a number of different receptacles which provide power to electrical equipment. I accept the argument of the IBEW that there is no evidence before me that a certified electrician or apprentice electrician is (or is not) required to connect a stove plug to a 220 volt stove receptacle or a welder plug to a 347/600 volt welder receptacle. But even leaving these examples aside (and the question of which party bore the burden of proof as to who may perform the work), I am, I believe, entitled to take notice of the fact that a notebook computer is a piece of electrical equipment that may be used on a construction project. The IBEW's interpretation would mean that anyone could plug the power adaptor of such a computer into a standard receptacle, but only an electrician could plug the other end of the adaptor into the computer itself.

38. For all of the foregoing reasons, the appeal is denied.

1444-10-ES Deena Schiller, Applicant v. **P & L Corporation Ltd.** and Director of Employment Standards, Responding Parties.

Employment Standards – Discharge – Reprisal – The employee, who sold newspaper subscriptions door-to-door and was paid on a straight commission basis, applied for review of a refusal to issue an order for payment of minimum wage – She had signed a contract that described her as an independent contractor, and was terminated one day after she sought payment of minimum hourly wages – The employer asserted she was terminated for failure to produce adequate sales – The Board considered whether the worker was an independent contractor or an employee – The Board also looked at whether the commissioned salesperson exemption to minimum wage and vacation pay under section 2(1)(h) of Ont. Reg. 285/01 of the *Employment Standards Act, 2000* applied, or if the exception to the exemption for a "route salesperson" applied – It was also determined if a reprisal under section 74(1) of the *Act* had occurred in the circumstances – The worker was found to be an employee, not an independent contractor, because the employer exercised substantial control over her activities: the employee was picked up along with other "team members" each day and dropped off in an assigned neighbourhood; she was given a list of non-subscribers on particular streets in the neighbourhood to solicit; the list was collected by the employer at the end of the week; the employee was given a script of what to say to potential customers; she could not negotiate the percentage of commission she earned, and could not increase her ability to earn by doing work at times or in neighbourhoods other than determined by the employer – The Board also found the employee was a "route salesperson" and not a commissioned salesperson exempt from minimum hourly wage and vacation pay provisions of the *Act* – The Board also determined the employer had not discharged its onus under section 74 of the *Act* and a reprisal had occurred – The employer had terminated the employee's employment one day after her written request that she be paid minimum wage – In addition to minimum hourly wage pay and vacation pay, the Board awarded the employee two months of pay for the time it took her to find a new job, and one month of wages for loss of reasonable expectation of employment – Application allowed

BEFORE: *Kelly Waddingham*, Vice-Chair.

APPEARANCES: *Deena Schiller* appearing on her own behalf; *Paul Cupido* and *Lise Cupido* appearing for P & L Corporation Ltd.; no one appearing for Director of Employment Standards.

DECISION OF THE BOARD: March 13, 2012

1. This is an employee application for review of an Employment Standards Officer's refusal to issue an order to pay under the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the "Act").

2. The issue to be decided is whether the applicant, Ms. Schiller, who sold newspaper subscriptions door to door, is entitled to minimum hourly wages and vacation pay. Ms. Schiller alleges that when she asked the employer P & L Corporation ("PLC") to pay her minimum wage, her employment was terminated. PLC argues because Ms. Schiller was a commissioned salesperson working outside of the office, PLC is exempt from paying minimum wage and vacation pay. PLC argues that they terminated their association with Ms. Schiller for failure to produce adequate sales.

FACTS

3. Ms. Schiller testified on her own behalf. The general manager of PLC, Mr. Cupido, testified on behalf of the company.

4. PLC is an outsourcing company which sells subscriptions for the *Ottawa Citizen*. PLC is owned by Mr. Cupido's spouse.

5. Ms. Schiller was engaged by PLC to sell subscriptions door to door. In July 2009, Ms. Schiller signed a contract with PLC which described her as an independent contractor. She was paid on a straight commission basis for subscriptions. She sometimes earned less than minimum wage and was not paid overtime, vacation pay or for public holidays. In December 2009, Mr. Cupido told Ms. Schiller that PLC would no longer engage her services as the *Ottawa Citizen* had received complaints that Ms. Schiller had been knocking on the doors of homes of people who were already subscribers to the paper.

6. In April 30, 2010, Ms. Schiller was once again engaged by PLC. While she did not sign a new contract, she understood that she would be paid 100% commission according to her previous contract with PLC.

7. Mr. Cupido testified that he picked up Ms. Schiller and other "team members" at 4:00 p.m. in his vehicle and dropped them off in an assigned neighbourhood where they would start to work at 5:00 p.m. Mr. Cupido testified that he worked as part of the "team" on the street with other "team members." At 8:00 p.m. Mr. Cupido would pick up Ms. Schiller and return her home by 9:00 p.m. Mr. Cupido testified that Ms. Schiller and the team worked Monday to Friday, but that she was free to work at other times during the day and on the weekends.

8. The *Ottawa Citizen* provided PLC with lists of non-subscribers in neighbourhoods throughout the City of Ottawa. Mr. Cupido would give Ms. Schiller the list of non subscribers on a particular street to solicit. Mr. Cupido would collect the list at the end of the week. Mr. Cupido instructed Ms. Schiller on how to perform sales and provided her with a script of what to say to a potential customer.

9. Mr. Cupido stressed the importance of ensuring that only the addresses that were on the list were solicited. He explained that Ms. Schiller had lost her glasses in December 2009 and so was knocking on all the doors on a street without regard to the list. This had elicited complaints from the homeowners who were subscribers to the *Ottawa Citizen*.

10. Ms. Schiller testified that her hours of work were between 2:00 p.m. to 8:00 p.m. Monday to Friday. According to Ms. Schiller, she had asked to work on the weekend but Mr. Cupido would not provide her with a list of homes to solicit. Ms. Schiller provided a hand written list of the hours which she claimed to have worked between April 30 to May 16, 2010.

11. On May 25, 2010 Ms. Schiller provided Mr. Cupido with a handwritten note outlining the hours she had worked in April and May 2010 and requested minimum wage in accordance with the Act.

12. Ms. Schiller testified that when she called Mr. Cupido on May 26, 2010 and asked to be paid minimum wage he refused and told her that she was a commissioned salesperson. When Ms. Schiller told Mr. Cupido that she would go to the Ministry of Labour he told her that her "employment was terminated." Mr. Cupido testified that he had terminated PLC's association with Ms. Schiller because she was not meeting sales expectations.

ANALYSIS

13. The first issue which the Board must determine is whether or not Ms. Schiller was an employee or an independent contractor. If she was an independent contractor, then she has no entitlement to the minimum wages and vacation pay that she claims under the Act. This is a question to be determined by examining the substance of the relationship, not its form. Ultimately the question is whether in performing the work she was engaged to perform by Mr. Cupido, Ms. Schiller was performing it as a person engaged in business on her own account. If so, she was an independent contractor. If not, then she was an employee within the meaning of the Act.

14. Mr. Cupido relies on the contract signed by Ms. Schiller in July 2009 which describes her as an independent contractor. Section 5(1) of the Act prohibits attempts to contract out of its provisions and renders any such contract void. See *The Greco Health Shack* [2005] OESAD No. 34 citing *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.* 2001 SCC 59 (CanLII), [2001] 2 S.C.R. 983.

15. In my view it is clear that in performing the work, Ms. Schiller was not engaged in business on her own account. Based on Mr. Cupido's own evidence, he exercised substantial control over Ms. Schiller's activities. Mr. Cupido provided a script and materials, including most significantly the list which allowed Ms. Schiller to solicit subscriptions on behalf of the *Ottawa Citizen*. Ms. Schiller could not negotiate with the *Ottawa Citizen* for a different commission, and could not increase her ability to earn the predetermined commission by doing the work at times or in neighbourhoods other than those determined by Mr. Cupido. Mr. Cupido testified that Ms. Schiller was free to work on weekends; however, he also testified that he provided the list to Ms. Schiller at the beginning of the week and reclaimed the list at the end of the week, making it impossible for Ms. Schiller to work on the weekends. Accordingly, I find that Ms. Schiller was an employee within the meaning of the Act.

16. The second issue before me is whether Ms Schiller's employment is exempt from the minimum wage, overtime, vacation pay and public holiday provisions of the Act by virtue of section 2(1)(h) of Ont. Reg. 285/01 which provides:

> …
>
> (h) as a salesperson, other than a route salesperson, who is entitled to receive all or any part of his or her remuneration as commissions in respect of offers to purchase or sales that,

(i) relate to goods or services, and

...

17. The terms "salesperson" and "route salesperson" are not defined by the Act or the Regulation. The purpose of the analogous provision in Regulations to the former Employment Standards Act was described, however, in *Viceroy Construction Company Limited*, July 16, 1976, E.S.C. 368, as follows:

> The intent of the legislation in this particular exemption is clearly to remove the burden from an employer of paying vacation pay to those salesmen over whose time sheets he has little or no control. The prime example would be the door to door salesman whose employer is not aware of how many hours the employee works on a day by day basis.

18. In *Maria Amato and Giuseppe Amato o/a The All Ontario Youth Group*, 2003 CanLII 2984 (ON LRB); 2003 CanLII 2984 (ON LRB), the Board reviewed the jurisprudence with respect to the interpretation and application of the provision and stated as follows:

> 38. The authorities make three points. (1) That sales work is treated differently under the Act from work performed in a traditional employment relationship because of the different degree of control over work exercised by both employer and employee. (2) That the "route" sales exception must mean that the general assumptions about sales do not apply to this discrete category of sales. (3) That control cannot be the only factor in determining whether sales are "route" or not, as that term is not used in the Regulation or the statute.
>
> 39. On the first point, the theory is that in sales work, the employee exercises a greater degree of control over the work performed than in a traditional "non-sales" employment relationship. Conversely, the employer in sales work exercises less control. It is this different balance in the degree of control over the work (as between employer and employee) that justifies the exception to the application of Parts VII and XI of the Act for sales work.
>
> 40. On the second point, the analysis is that the exclusion of "route" sales from the general exemption in the Act for sales, must be justified on the grounds that in route sales, the employer continues to exercise a significant degree of control over work done. If the employer controls the work in a manner similar to an employer in non-sales work, then the provisions of Parts VII and XI should apply. This in turn leads to the conclusion that the balance of "control" as between employee and employer will be a significant factor in assessing whether the sales are "route" or not.
>
> 41. The third point is that one must be wary of reading into the Regulation a definition of "route salesperson" that turns on the issue of control alone, as that term is not used in the Regulation or the

> statute. The term "route" must be given some meaning other than just one which relates to the degree of relative control exercised by the two parties to the employment relationship.

19. In *Hayat v. Clegg Campus Marketing*, 2006 CanLII 19392 (ON LRB) the Board defined the term "route salesperson":

> What ever else it may mean, term "route salesperson" captures a salesperson who follows a specified route of customer locations over the course of a day where the employer exercises substantial control over the hours of work and the manner in which the work is performed.

20. In the present case, the employer controlled "the list" which enabled Ms. Schiller to solicit new customers in a particular neighbourhood. The sales in this case are conducted according to "routes" which are established and determined by the employer's "list" and not the employee. The employer controlled Ms. Schiller's hours of work by picking her up and dropping her off. Mr. Cupido was one of the team members working in the same neighbourhood in which Ms. Schiller was working, thereby allowing him to know that Ms. Schiller was soliciting customers on the list and not sitting in a coffee shop. Mr. Cupido also controlled the manner in which Ms. Schiller performed the work by providing her with a script when she solicited subscriptions.

21. There is no doubt that Ms. Schiller exercised little, if any, control over the manner in which sales were conducted. In these circumstances, I find that Ms. Schiller is a route salespersons for purposes of section 2(h) of Regulation 285/01 made under the Act. Accordingly, she is entitled to be paid minimum hourly wages and vacation pay.

22. Mr. Cupido testified that Ms. Schiller worked Monday to Friday from 5:00 p.m. to 8:00 p.m. a total of 15 hours per week. I prefer the documented evidence of Ms. Schiller's hours which are written in her letter of May 25, 2010 as it is contemporaneous to the events and therefore more reliable than Mr. Cupido's recollection of the events which occurred almost two years prior to the hearing. Based on Ms. Schiller's May 25, 2010 letter Ms. Schiller is entitled to $501.28 in wages and vacation pay. (75.5 hours x $10.25 = $774.00 - $292.00 in commission paid = $482.00 + 4% vacation pay ($19.28) = $501.28).

23. The next issue to determine is if Ms. Schiller's employment was terminated as a reprisal for exercising her rights under the Act contrary to section 74 of the Act which provides:

> **74.** (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,
>
> (a) because the employee,
>
> (i) asks the employer to comply with this Act and the regulations,

> (ii) makes inquiries about his or her rights under this Act,
>
> (iii) files a complaint with the Ministry under this Act,
>
> (iv) exercises or attempts to exercise a right under this Act,
>
> (v) gives information to an employment standards officer,
>
> (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
>
> (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,
>
> (viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or
>
> (b) because the employer is or may be required, because of a court order or garnishment, to pay to a third party an amount owing by the employer to the employee.
>
> (2) Subject to subsection 122(4), in any proceeding under this Act, the burden of proof that an employer did not contravene a provision set out in this section lies upon the employer.

24. The onus is upon an employer to demonstrate that it did not breach section 74. I find that PLC has not discharged its onus in this case.

25. Mr. Cupido testified that PLC ended its "association" with Ms. Schiller because she was not meeting sales expectations. Although PLC included a copy of Ms. Schiller's sales record and other associates' sales records in its response, Mr. Cupido made no reference to this documentation in his testimony. There was no evidence regarding what PLC's sales expectations were, if the expectations had been outlined to Ms. Schiller, and if Mr. Cupido had spoken with Ms. Schiller about her sales performance prior to terminating her "association" with PLC. Based on the timing of Ms. Schiller's termination, one day following her written request that she be paid minimum wage, I find that Ms. Schiller's employment was terminated because she requested to be paid a minimum hourly wage.

26. The presumptive remedy in which there has been a reprisal under the Act is to return the employee to work. However, Ms. Schiller does not wish to return to work and the employment relationship between Ms. Schiller and PLC is beyond repair. When reinstatement is

deemed not to be an appropriate remedy the Board has alternatively awarded "make whole" damages in the form of an order for compensation.

27. Under the category of direct wage loss, Ms. Schiller is entitled to be compensated to the degree necessary to ensure that she is no worse off than if the breach of the Act had not occurred (*Thiessen Greenhouse Flowers Ltd.* [2003] OESAD No 1324 at para 32). The amount awarded under this head of damage is equal to the employee's wage multiplied by the number of weeks it takes to find a new job. However, Ms. Schiller is required to attempt to find alternate employment in order to mitigate her damages. Ms. Schiller testified that it took her seven months following PLC's termination of her employment to find alternate employment, but provided no documentary evidence regarding her efforts. Ms. Schiller is also entitled to damages for the loss of the reasonable expectation of employment

28. Given the short length of Ms. Schiller's employment with PLC and based on the evidence before me, Ms. Schiller is entitled to two months of pay for the period during which she was unable to find a job. Ms. Schiller is also entitled to one month of wages for the loss of the reasonable expectation of employment. In accordance with section 74 of the Act, Ms. Schiller is to be paid three months of wages in the amount of $3,096.00; $258.00 was her average earnings over the three-week period of time during which she was employed ($258.00 x 12 week) plus vacation pay thereon in the amount of $123.84 = $3,219.84.

DISPOSITION

29. This application for review of the Employment Standards Officer's refusal to issue an order is allowed. Therefore, pursuant to section 118(7)(b) of the Act, the Board hereby orders the responding party employer to pay forthwith to the Director of Employment Standards in trust for the benefit of the applicant the sum of $3,721.12; ($501.28 wages and $3,219.84 reprisal inclusive of vacation pay) owing to her. If this amount is not paid within thirty (30) days of the date of this decision it will attract $372.11 in administration fees and post-judgment interest in accordance with the *Courts of Justice Act*.

1889-11-ES Jennifer Polak, Applicant v. **Paul Timothy Baker o/a Student Media Services Inc.** and Director of Employment Standards, Responding Parties.

Employment Standards – The employee sought an order for termination pay – The employer, Student Media, was in a contractual relationship with Campus Publications to solicit advertising for various university and college publications – Each company had its own employees, payroll, management, etc. – When the relationship between SM and CP soured and CP undertook to do its own solicitation work, SM gave notice to its employees and subsequently laid them off before the notice period had expired – SM argued that the two companies were related, or that there had been a sale of business from SM to CP when CP took over the contract sales, so the two companies, at the very least, were jointly liable for the termination pay – The Board found no evidence of association or relatedness between the companies, and no sale of anything more than assets (if at all) – Application allowed; termination pay ordered

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *Jennifer Polak* and *Jillian Magloire* for the applicant; *Karen Zvulony, Paul Baker* and *Sue Cook* for the responding party; *Sevda Mansour* for the Director of Employment Standards.

DECISION OF THE BOARD: March 13, 2012

1. This is an application under section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c. 41, as amended ("the Act") for review of a decision of an Employment Standards Officer to not issue an order to pay wages against the responding party ("Mr. Baker"). The Officer concluded on the evidence before her that Mr. Baker was not liable to pay termination pay to the applicant ("Ms. Polak").

2. This proceeding came on for hearing before me on Monday, March 5, 2012. I heard sworn testimony from Ms. Polak and Mr. Baker. No other witnesses were called to give testimony. At the close of testimony, I heard brief argument from the parties regarding the conclusions that I should reach on the facts established by the evidence. My decision follows below.

The Facts

3. The relevant facts are not in dispute. For the better part of 25 years Mr. Baker operated a business known as Student Media. That business came to an end at the end of June, 2010. At all relevant times for the purposes of this proceeding, Student Media was an unincorporated business. It operated out of an office suite located at 68 Harwood Avenue South in Ajax, Ontario.

4. Student Media most recently acted as a subcontractor to another business, Campus Publications. Campus Publications is owned by Mr. Rein Kangro. As I understand it, Campus Publications secured through contracts with individual Canadian universities and colleges the right to obtain advertising for various publications produced by those institutions. Once Campus Publications secured that right, it contracted with Student Media to generate that advertising. Sales people working for Student Media would contact potential advertisers for the university and college publications in question, and sell them advertising in those publications. If a potential advertiser agreed to place advertising in a university or college publication, a contract was entered into between the potential advertiser and Campus Publications. A Student Media salesperson that called a prospective advertiser on behalf of a university or college contracted to Campus Publications initially identified himself or herself as calling on behalf of that institution. If asked by a prospective advertiser who actually employed the salesperson, the salesperson indicated that he or she was employed by "Student Media, a subcontractor of Campus Publications".

5. Campus Publications was paid for the advertising it secured for a university or college in accordance with the contract it had with that specific university or college. Mr. Baker testified that half of the funds obtained through those contracts was retained by Campus Publications, and that the other half of those funds was paid to Student Media. Mr. Baker operated Student Media

out of those funds. Student Media had its own payroll system and paid rent for its office space. Any excess of funds over and above the cost of operating Student Media was retained by Mr. Baker. Mr. Baker testified that Mr. Kangro has been in poor health for some time, and that he had operated both Campus Publications and Student Media on a day-to-day basis prior to July, 2010. In that regard, Mr. Baker testified that he had been responsible for securing for Campus Publications contractual rights from universities and colleges to seek advertising on their behalf. When he performed that task, he identified himself as calling on behalf of Campus Publications.

6. At all relevant times Ms. Polak was employed by Student Media as its Sales Manager. The claim for termination pay made by Ms. Polak arises out of events that occurred in June, 2010. On Thursday, June 10, 2010, Mr. Kangro and his wife unexpectedly showed up at the offices of Student Media. Mr. Baker testified that because Mr. Kangro is quite ill, Ms. Kangro had acted as *de facto* owner in his stead. During the course of this visit, Ms. Kangro engaged Mr. Baker in a discussion that became quite heated as a result of certain accusations she made against Mr. Baker. Mr. Baker testified that his impression was that Ms. Kangro made these accusations in order to provoke him into quitting his employment. He did not do so. Instead he asked her to leave his office, which she did.

7. Shortly thereafter Ms. Kangro returned to his office. She advised Mr. Baker that Campus Publications no longer desired to maintain a subcontracting relationship with Student Media. Mr. Baker testified that Ms. Kangro advised him that Campus Publications would employ him at a salary level equivalent to the draw amount that he had been paying himself through Student Media. Mr. Baker testified that he questioned in his own mind the legitimacy of the offer of employment. He was told by Ms. Kangro that in his new position at Campus Publications he would be responsible for contracting with universities and colleges. He had been doing that work, and did not believe that those tasks established a full-time job, one that would legitimately justify paying him a salary equal to the amount he then earned through Student Media.

8. Ms. Polak testified that she was called into a meeting at the Student Media offices with Mr. and Mrs. Kangro and Mr. Baker just before 10:00 a.m. on that day. Ms. Polak states that she was advised at that time that Campus Publications had spoken with Mr. Baker and had expressed certain concerns regarding the subcontracting arrangement then in place with Student Media. Ms. Polak was advised that Campus Publications wanted to hire Mr. Baker on as its Regional Manager, and bring him onto payroll for the same salary amount that he was paying himself through Student Media. She was told that the Student Media employees were going to be let go and then re-hired by Campus Publications. She was also advised that all of the arrangements would be handled by Campus Publications. Mr. Baker spoke to Ms. Polak later that day and advised her that he had concerns regarding the intentions of Campus Publications. In particular, Mr. Baker told Ms. Polak that he was concerned about being fired by Campus Publications within the probationary period established for his new position, such that he would be deprived of any severance pay.

9. On Monday, June 14, 2010, Ms. Polak arrived at the Student Media offices to find an e-mail from Mr. Baker. Mr. Baker had secured legal advice since he had last spoken with Ms. Polak. Mr. Baker explained in his e-mail that he would not be joining Campus Publications as

an employee. Mr. Baker had previously established another business called "CASB Media". Mr. Baker indicated to Ms. Polak in his e-mail that he planned to work at CASB Media rather than for Campus Publications.

10. On Wednesday, June 16, 2010, Mr. Baker attended at the offices of Student Media and called a meeting with staff. At that time he handed all of the employees a letter that read, in part, as follows:

> Student Media
> Ajax
>
> Notice of termination of Employment
>
> All employees of Student Media are hereby given notice that Student Media shall be terminating your employment as of eight weeks from today.
>
> Campus Publications is going to assume the responsibility for its own contracts, therefore, the services of Student Media shall no longer be required. Campus Publications will be hiring you on at the end of this termination period.
>
> You may be subject to termination prior to the eight weeks notice, as long as your legal notice period has been given. For instance, if you are only entitled to 2 weeks notice, you may be released 2 weeks from now. This will only happen should your performance fall below standard.
>
> . . .
>
> It has been my pleasure to have you all as part of my team. You are one of the best teams I have seen in many years. I know you will be looked after in Campus Publications. You jobs will not change – just the company name that will be paying you.
>
> Any questions pertaining to your future employment with Campus Publications should be directed to Campus Publications directly, as I cannot speak for them.
>
> [signed] "Paul Baker"
> Owner
> Student Media

Ms. Polak made enquiries with Mr. Baker regarding the possibility of her going to work with him at CASB Media. Mr. Baker indicated to Ms. Polak that CASB Media had very little start-up capital and would not need a Sales Manager or an Administration Manager for one to two years.

11. Mr. Baker testified that during the week of June 14, 2010 he had negotiated with the Kangros an agreement under which their business relationship would end amicably. That agreement was to have been reduced to writing and signed that same week. However, the

agreement was never executed. Mr. Baker testified that on the same day that the agreement was to be signed, the Kangros determined not do so. Mr. Baker testified that they provided him with a few unsatisfactory reasons for not signing, walked away from the agreement, and then subsequently sued him.

12. Mr. Baker testified that by mid-June, 2010, he had no continuing relationship with Campus Publications. He testified that he felt that everything he had worked for had been taken from him. Mr. Baker confirmed in his testimony that no agreements transferred between Student Media and Campus Publications when he left Student Media. To the best of his knowledge, Campus Publications maintained all of the previous contracts it had signed and continued to perform the same work that it and Student Media had performed previously. Mr. Baker testified that Ms. Kangro had told him that Campus Publications would transfer the employees of Student Media over to Campus Publications once they had worked out the notice given to them on June 16, 2010, and that the Student Media bank account would be credited for the amounts paid by Student Media to the employees during the notice periods. Mr. Baker characterized these actions as "a takeover, a transfer of power". He testified that Campus Publications did not, in fact, pay amounts into the Student Media bank account as he had been advised it would. At the time that Mr. Baker closed down the operations of Student Media, that business had as its major assets two computer systems, a telephone system and some office furniture.

13. There is no dispute that the Student Media payroll was not met for the weeks ending June 18, 2010 and June 25, 2010. Campus Publications advanced to the employees of Student Media an amount equal to the net amount that they would have been paid by Student Media for those two weeks. According to Ms. Polak, the amounts advanced were to be repaid to Campus Publications in one of a number of ways. If an employee were to move to CASB Media, the amount was to be repaid to Campus Publications upon leaving Student Media. If an employee were to become employed by Campus Publications, the money could be repaid to Campus Publications through commissions subsequently earned on advertising sold. If the advance was not repaid by the time that an individual's employment ended with Campus Publications, the amount is to be paid to Campus Publications by that person at that time.

14. Through to the end of June, 2010, Ms. Polak continued to perform services for Student Media as its Sales Manager. She also performed some of the duties previously performed by Mr. Baker. A critical exchange of e-mails for the purposes of this proceeding occurred on Monday, June 28, 2010. By that time Mr. Baker was not attending at the Student Media offices. Early that morning, Ms. Polak received an e-mail from Mr. Baker. Attached to that e-mail was an e-mail that had been directed to Mr. Baker from a college, seeking certain information. Mr. Baker asked Ms. Polak to follow up on the information request. Ms. Polak responded to Mr. Baker, in part, as follows:

> Hey Paul. So you know, the $ we got from Campus last week was an advance (with ALL deductions made) NOT a payroll cheque. So the payroll that bounced last week is still owed to SM employees. How should we handle this? I am trying to figure out the vacation amounts and what ever you need, but being here by myself, doing 3 peoples jobs, I can't get anything done. ... So you know **everyone** has signed with Campus, with the exception of Steve, Darlene and

> myself. Sue will remain my backup. I am waiting cause I am left in limbo here. I am doing my job, Dar's job and your job …. so who the hell do I work for??? I think maybe you should fire me, lay me off or something, cause I can't go without pay. I spoke with EI and it will not help me if I quit, or else I would. This is getting too much for me to handle …

Approximately 30 minutes later, Mr. Baker responded to the above message from Ms. Polak, as follows:

> I have a telephone interview with my lawyer an hour from now. All I can tell you, at this point, is that action against CP is being taken. With immediate effect (use this email as your authority, I have no choice but to call a temporary layoff. Until I get this matter in court (which my lawyer indicates will be sooner than later), there is no money coming into Student Media at all. Effectively, Student Media is in a bankrupt situation. If you are taking any instruction from Campus Publications, however, that means you are working for them rather than Student Media. So again, with immediate effect, I have to call a temporary layoff, with a view to hiring you back within the next 13 weeks. Last hour worked for Student Media will be 12 noon today. CP have forced this, but I will win in the end – of that I am very confident as is my lawyer.

To this e-mail, Ms. Polak responded as follows, approximately 30 minutes later:

> So what do I do about payroll? Do I put it in let it bounce and then what? I am so confused. What about the $ still owing. I am so confused about what you say that I am working for Campus. Student Media has always worked with/for Campus, so to do my job with Student Media I have to work with Campus. So what do I do. I am stuck in a rock and a hard place.

Shortly thereafter, Mr. Baker stated the following in response to the latter message forwarded by Ms. Polak:

> I just got off the phone with my lawyer. It is good news, but that's all I can say at the moment. If CP are not credited anything for the SM payroll, then there is no point calling it in. Assumingly, CP will pay everyone as they have actually been working on sales under CP. SM is a separate business from CP so there should be no confusion there. My lawyer agreed that a temporary layoff is to be called immediately (as I mentioned earlier). In the meantime, action is now being taken (very quickly) that will see the legitimate payments being made to SM. As soon as these payments are met, any remaining money due to staff will be paid out in full. So, during the layoff period, you are free to work for CP, but, at any time, if I get something else going in sales (not necessarily related in any way), I am entitled to bring the staff back to a new location – they then have a choice of either continuing

> to work for SM or not. This is from my lawyer and is the only option available.
>
> I need to know how many hours you have worked for CP (doing artwork, for instance) during SM payroll. My lawyer has requested this.

15. Mr. Baker testified in chief that the lawyer from whom he secured legal advice at the time (a different lawyer than his current counsel) was someone he knew who practiced corporate law. During the course of his cross-examination I asked Mr. Baker about the statements he made in the e-mails set out above regarding the role he played in the layoff of Ms. Polak, and the relationship between Campus Publications and Student Media. At that point, Mr. Baker played down his previous testimony, asserting that his legal advisor was merely a "friend" who had simply advised him to "shut it down". He also testified that at the time that he put together his e-mails to Ms. Polak he was under extreme pressure and stress, and had been deluged with e-mails regarding the Student Media business.

16. Ms. Polak stated that she was never given an opportunity to continue with Student Media or to be hired by CASB Media. Instead, an offer was made to her to fill the position of Regional Manager for Campus Publications, with an effective date of July 1, 2010. She accepted that offer, and still holds that position. She performs the same work she did previously for Student Media, plus some of the tasks previously performed by Mr. Baker. She is paid the same hourly rate by Campus Publications that she was paid by Student Media when she worked for it. Ms. Polak testified that because Campus Publications controlled the database of contracts, the work she performs today is largely for the same customers that she dealt with when she worked for Student Media. The same model is employed by Campus Publications to secure advertising for university and college publications as was used previously by Student Media, and the contracts for advertising are signed in the name of Campus Publications, as before. Ms. Polak testified that most of the individuals who worked for Student Media joined Campus Publications after Mr. Baker left in June, 2010.

17. There is no dispute that Ms. Polak was employed by Mr. Baker, operating as Student Media, for 11 years prior to June 28, 2010. The Record of Employment that she received at the time of her layoff from Student Media identified her employer as Student Media.

18. It was evident from the materials before the Board and from Mr. Baker's testimony that after June, 2010, a civil lawsuit had been issued against Mr. Baker. I asked Mr. Baker what position he took in that lawsuit regarding the relationship between Campus Publications and Student Media. Counsel for Mr. Baker advised that Mr. Kangro had asserted in a statement of claim that Mr. Baker was an employee of Campus Publications. She advised that Mr. Baker asserted in his statement of defence that he was not an employee of Campus Publications, and that Campus Publications and Student Media were interconnected through a subcontracting relationship.

19. I provided Ms. Polak and counsel for the Director of Employment Standards with an opportunity to question Mr. Baker regarding that assertion. At that time, Ms. Mansour for the Director produced from her file a copy of the statement of defence and counterclaim filed by Mr.

Baker, and questioned Mr. Baker regarding one of the paragraphs therein. Ms. Polak had not seen the pleading. Nor had I. Without objection, two copies were made of the pleading. I provided one of those copies to Ms. Polak to review. It is evident from the pleading that the owner of Campus Publications, Mr. Kangro, commenced a civil lawsuit in the Ontario Superior Court of Justice against Mr. Baker, Student Media, CASB Media and other parties. Ms. Polak was provided with an opportunity to review the pleading at that time, and to question Mr. Baker on the document, which she did. Ms. Mansour had no further questions of Mr. Baker, and counsel for Mr. Baker re-examined him on some of the answers he had provided to Ms. Polak.

20. Of potential significance to this proceeding are the following paragraphs contained in the Statement of Defence and Counterclaim filed by Mr. Baker (and the other defendants) in the civil claim:

> 5. At all material times, Baker owned and operated his own independent sales agency company, which operated under various firm names throughout the years (Baker & Baker Agencies, Student Media, Student Media Services Inc., all hereinafter referred to collectively as "Baker's Company").
>
> 11. Baker was never an employee of the Plaintiff, Rein Kangro ("Kangro") or employed by him, Campus Publications and/or College Publications in any manner whatsoever.
>
> 16. Throughout the Agreement, Baker and his Company operated out of its own independent offices, which they paid for.
>
> 19. Baker and his Company operated with complete autonomy from Kangro, who had no input or control in the manner in which Baker and his Company operated or the manner in which they solicited advertisers.
>
> 22. Throughout the Agreement, Baker and his Company employed a staff of roughly fourteen employees. Baker and his Company were solely responsible for the hiring, termination, pay and any and all other employer obligations. Kangro had no input or control in any manner whatsoever in how Baker and his Company hired, fired or dealt with any of its employees.
>
> 23. All the employees referred to in the statement of claim, were hired, employed by, and paid for by Baker and his Company, not Kangro as alleged. At all the material times, Kangro had absolutely no control over or relationship with any of Baker and his Company's employees, let alone one of employer/employee.
>
> 28. The Agreement continued until on or about June 9, 2010, when Kangro, unilaterally and without warning terminated the Agreement with Baker and his company.
>
> 30. As a result of Kangro's unilateral and without warning termination of the Agreement, Baker was forced to provide his staff

> with notice of termination and was no longer able to maintain the costs of operating.
>
> 33. Following Kangro's unilateral termination of the Agreement, it was Baker, not Kangro, who paid for, and who remains responsible for paying statutory termination pay to the employees that he was forced to lay off.

With specific reference to paragraph 22 of the statement of defence and counterclaim, Mr. Baker confirmed that he adopted the facts pleaded for the purpose of this proceeding.

21. Ms. Polak included with the materials she filed with the Board eight payroll stubs that she had received from Student Media. She identified these during the course of the hearing. The payroll stubs reflect that the money paid to Ms. Polak as wages was paid by Student Media. Ms. Polak indicated that these payroll stubs fairly represented the hours of work and compensation that she was paid while working for Student Media. The payroll stubs reflect that Ms. Polak was paid at the rate of $15.50 per hour, and that, on average, she worked 33 hours per week. Accordingly, in a typical work week Ms. Polak earned $511.50 from Student Media.

The Issue and Argument

22. The parties provided me with very little argument. Ms. Polak claims that she was laid off by Mr. Baker on June 28, 2010, was not recalled to employment at any time, and was not provided with notice of termination or termination pay as required by the Act. She claims from Mr. Baker, operating as Student Media, eight weeks termination pay in accordance with section 61(1) of the Act.

23. The argument made by counsel on behalf of Mr. Baker is essentially the same argument that was accepted by the Officer who refused to make an order to pay. Simply put, the assertion made by Mr. Baker is that Campus Publications and Student Media were engaged in operating the same business under a revenue and expense sharing agreement. When the relationship with Mr. Baker came to an end, Ms. Polak was promoted by Campus Publications. Although there was some uncertainty on her part at the time of transition, there were no major changes to the workplace situation for Ms. Polak. Counsel reviewed the evidence regarding the business operations of Student Media and Campus Publications, and the work tasks performed by Ms. Polak, both before and after July, 2010. She asserted that nothing had changed in any significant way. There was no interruption of Ms. Polak's employment, she made sales contacts with new or repeat clients as a representative of Campus Publications like she did before, and she was paid the same amount to do so.

24. In the alternative, Mr. Baker relies upon section 9 of the Act. Counsel argued that when Mr. Baker left Student Media on or about June 15, 2010, Campus Publications effectively took over the business in its entirety. Accordingly, she asserts that there has been a sale of a business by Mr. Baker to Campus Publications as defined by section 9(3) of the Act. Counsel relies upon the broad definition of "sells" contained in section 9(3). As a result of the sale, it is asserted that no termination pay is owed to Ms. Polak, and that the length of service built-up by

Ms. Polak at Student Media is now the responsibility of Campus Publications, as provided by section 9(1) of the Act.

25. No case authority was provided to the Board by counsel for Mr. Baker regarding the application of either statutory provision to the facts of this case.

26. On behalf of the Director of Employment Standards, Ms. Mansour argued that there is no evidence before the Board to establish that either section 4 or section 9 of the Act has any application to the facts of this proceeding.

Analysis

27. There is no dispute that Ms. Polak was employed by Mr. Baker, operating as Student Media, for 11 years. It is agreed that Ms. Polak was provided with written notice of termination by Mr. Baker on June 16, 2010, and that she was temporarily laid off by Mr. Baker on June 28, 2010. Finally, there is no dispute that Ms. Polak was never recalled to her employment with Student Media by Mr. Baker.

28. Section 54 of the Act provides that no employer shall terminate the employment of an employee who has been continuously employed for three months or more unless the employer has given the employee written notice of termination in accordance with section 57 or 58 of the Act, and the notice has expired, or the employer has complied with section 61 of the Act. As an employee with more than eight years service with Student Media, Ms. Polak was entitled to eight weeks written notice of termination (see section 57(h) of the Act).

29. On June 16, 2010, Mr. Baker provided Ms. Polak with eight weeks notice in writing of her termination from employment. However, that notice did not remain effective for the full eight week period. Nor did Ms. Polak receive any wages from Mr. Baker after June 16, 2010. Twelve days later, on June 28, 2010, Mr. Baker temporarily laid off Ms. Polak for a period not to exceed 13 weeks, presumably in accordance with section 56(2)(a) of the Act. That lay-off continued for longer than 13 weeks. Section 56(1)(c) of the Act deems a lay-off of an employee for a period longer than the period of a temporary lay-off to be a termination from employment for the purposes of section 54 of the Act. Section 56(5) of the Act states that, if an employer terminates the employment of an employee under section 56(1)(c) of the Act, the employment is deemed to have been terminated on the first day of the lay-off.

30. Accordingly, there can be no dispute that Mr. Baker terminated the employment of Ms. Polak on June 28, 2010.

31. Section 61(1)(a) of the Act provides that, in these circumstances, Mr. Baker owes Mr. Polak termination pay in a lump sum equal to the amount that she would have been entitled to receive had notice been given in accordance with section 57 of the Act. Section 61(1) of the Act states that Ms. Polak is entitled to eight weeks wages, in an amount not less than her regular wages for a regular work week. Section 61(1.1) of the Act states that, for the purposes of section 61(1) of the Act, if an employee does not have a regular work week, the termination payment owed to the employee is calculated by reference to the average amount of regular wages earned

by the employee per week for the weeks worked in the 12 week period immediately preceding the day of termination.

32. As noted above, only eight weeks of pay stubs were provided by Ms. Polak. However, Ms. Polak testified that those stubs fairly reflected the number of hours she typically worked during a normal work week, and I am prepared to use those eight weeks of pays stubs to determine the amount earned by Ms. Polak during her regular work week. As calculated above, Ms. Polak earned $511.50 per week when she was employed with Student Media. Her statutory entitlement to eight weeks termination pay totals $4,092.00, in the absence of any argument made by Mr. Baker that would preclude his responsibility for the payment of that amount.

33. This raises for consideration the position taken by Mr. Baker that the operation of section 4 and/or section 9 of the Act precludes any liability on his part for termination pay due to Ms. Polak.

34. Section 4 of the Act reads as follows:

> 4. (1) Subsection (2) applies if,
>
> (a) associated or related activities or businesses are or were carried on by or through an employer and one or more other persons; and
>
> (b) the intent or effect of their doing so is or has been to directly or indirectly defeat the intent and purpose of this Act.
>
> (2) The employer and the other person or persons described in subsection (1) shall all be treated as one employer for the purposes of this Act.
>
> (3) Subsection (2) applies even if the activities or businesses are not carried on at the same time.
>
> (4) Subsection (2) does not apply with respect to a corporation and an individual who is a shareholder of the corporation unless the individual is a member of a partnership and the shares are held for the purposes of the partnership.
>
> (5) Persons who are treated as one employer under this section are jointly and severally liable for any contravention of this Act and the regulations under it and for any wages owing to an employee of any of them.

35. It appears to me that the reliance by Mr. Baker on section 4 of the Act is fundamentally flawed. Even if Mr. Baker is correct in his assertion that section 4 of the Act requires that he and Campus Publications be treated as one employer for the purposes of the Act, section 4(5) of the Act states that persons who are treated as one employer under section 4 of the Act are jointly and severally liable for any wages owing to an employee of any of them. Accordingly, if section 4 of the Act applies, both Mr. Baker and Campus Publications would be

individually liable for any termination pay due to Ms. Polak. Section 4 of the Act does not provide Mr. Baker with a means of avoiding that liability.

36. I note here that it appears from the Board File that Campus Publications was not given any notice of this proceeding. Given that Mr. Baker argues for a legal result that would adversely affect Campus Publications, Campus Publications ought to have been given notice of the hearing and an opportunity to make submissions on the issues in dispute in this proceeding. However, having regard to the conclusion that I reach below, the failure to provide Campus Publications with notice of this hearing does not preclude me from determining this proceeding.

37. Before two or more entities can be found to be one employer for the purposes of the Act, section 4(1) of the Act requires that there be a finding that those entities carry on "associated or related activities or businesses". The case law to date reflects that various factors have been considered by the Board and by courts to determine whether two or more businesses are "associated or related" for the purposes of the Act. Those factors include the existence of common management, common financial control, common ownership and a common trade name or logo; the movement of employees between the business entities; the transfer of assets between the entities; and whether there is a common market or customers served by the entities (see, for example, *Lian v. J. Crew Group Inc.*, (2001), 54 O.R. (3d) 239; and *Repower Automotive Services Inc.*, 2011 CanLII 82299).

38. The evidence does not establish that Student Media and Campus Publications are associated or related businesses for the purposes of the Act. The evidence establishes that Mr. Baker was the sole manager of Student Media. He ran its operations, he performed its accounting and bookkeeping, and he ultimately determined who would be hired and who would be laid off. Mr. Baker agreed during his testimony with the assertions made in paragraph 22 of his Statement of Defence and Counterclaim to the lawsuit brought by Mr. Kangro, namely that he was solely responsible for the hiring, termination, pay and all other employer obligations, and that Mr. Kangro had no input or control whatsoever in how Mr. Baker hired, fired or dealt with any of his employees. There is simply no evidence that Mr. Kangro had any involvement in the day-to-day management of Student Media. There is some evidence that Mr. Baker performed certain work tasks for Campus Publications, but that evidence does not establish that he managed the business operations of Campus Publications at any time. That role was filled by Mr. Kangro or, if he were unavailable to do so, by Ms. Kangro.

39. Similarly, there is no evidence of common financial control between Student Media and Campus Publications. Student Media was a subcontractor to Campus Publications. Consistent with such a relationship, Campus Publications regularly paid sums of money to Student Media for services rendered under that subcontracting relationship. Those payments do not establish common financial control. In fact, as noted above, the evidence establishes that Mr. Baker was solely responsible for the financial decisions made by Student Media. There is no evidence that he had any corresponding responsibility for the financial decisions made by Campus Publications.

40. There is no evidence before the Board of common ownership between Campus Publications and Student Media. Both businesses are sole proprietorships. Mr. Baker operated

Student Media for over 25 years. Student Media, as a subcontractor to Campus Publications, by definition maintained a close business relationship with Campus Publications. However, there is no evidence before the Board to suggest that there was any common ownership between the two entities. Similarly, although it is undisputed that many employees of Student Media accepted offers of employment with Campus Publications after Mr. Baker had provided those employees with notice of their termination from employment, there is no evidence that prior to June 10, 2010 there was any movement of employees between the two businesses, with the sole exception of Mr. Baker, who appears to have provided some services for Campus Publications as a result of the illness of Mr. Kangro.

41. There is no evidence of any common trade name or logo shared by Campus Publications and Student Media. Furthermore, they did not communicate to the marketplace that they were in any way associated or related. It will be recalled that Student Media employees identified themselves initially to prospective advertisers as calling on behalf of the university or college for which advertising was sought. If Student Media employees were asked to identify who they worked for, they did so by telling the individual that they worked for "Student Media, a subcontractor of Campus Publications".

42. Considered in broad terms, Campus Publications and Student Media both operated their business operations in a common marketplace. However, each served a different portion of that marketplace. The focus of the Student Media business was selling advertising space in university and college publications to the business community at large. Campus Publications, though ultimately the contractor with those advertisers, focused its business on securing from universities and colleges the right to sell that advertising space.

43. The application of section 4 of the Act to subcontracting relationships has been previously addressed by the Board. In *Victorian Order of Nurses Waterloo-Wellington-Dufferin Branch*, 2004 CanLII 47747 (ON LRB), a union asserted that section 4 of the Act applied to two community care access centres and their subcontractor, the Victorian Order of Nurses Waterloo-Wellington-Dufferin, such that all three were one related employer for the purpose of the Act. The subcontractor had made an assignment into bankruptcy, and the union asserted that its members ought to be paid their entitlements under the Act by the two community care access centres as related employers.

44. The Board found that section 4 of the Act did not apply in the circumstances of that case. At paragraph 26, the Board stated the following:

> The Board is satisfied that section 4 was not meant to apply to the relationship that is at issue in this case. The Board has two main reasons for coming to that conclusion. First, the Board has many of the concerns with a broader interpretation of section 4 than [sic] are discussed in *Avant*. Whatever section 4 means, in my view it could not have been the Legislature's intention to make employers the insurer of the employment standards claims of the employees who work for their sub-contractors. Such a result would fundamentally alter the employment landscape in Ontario. The Board is unaware of

> any impetus that would have caused the legislature to make such a change.

I agree with and adopt those observations.

45. Even if section 4 of the Act could properly be applied to the subcontracting relationship before me, there is very little evidence before the Board to suggest that Campus Publications and Student Media are "associated or related" for the purpose of section 4(1) of the Act. I note here that this conclusion is entirely consistent with many of the positions taken by Mr. Baker in the civil litigation brought against him by Mr. Kangro, the principal of Campus Publications. In that litigation, Mr. Baker unequivocally asserts in his pleading that Student Media acted independently from Campus Publications, and that it had "complete autonomy" from Mr. Kangro and his business, Campus Publications. It is also consistent with the assertion made by Mr. Baker in one of his e-mails to Ms. Polak on June 28, 2010. In that e-mail, Mr. Baker stated that Student Media was a "separate business" from Campus Publications.

46. For the reasons set out above, the assertion made by Mr. Baker that section 4 of the Act applies to make Student Media and Campus Publications one employer for the purposes of the Act fails.

47. I turn to section 9 of the Act. Section 9 of the Act reads as follows:

> **9.** (1) If an employer sells a business or a part of a business and the purchaser employs an employee of the seller, the employment of the employee shall be deemed not to have been terminated or severed for the purposes of this Act and his or her employment with the seller shall be deemed to have been employment with the purchaser for the purpose of any subsequent calculation of the employee's length or period of employment.
>
> (2) Subsection (1) does not apply if the day on which the purchaser hires the employee is more than 13 weeks after the earlier of his or her last day of employment with the seller and the day of the sale.
>
> (3) In this section,
>
> "sells" includes leases, transfers or disposes of in any other manner, and "sale" has a corresponding meaning.
>
> (4) For the purposes of subsection (1), employment with the seller includes any employment attributed to the seller under this section or a provision of a predecessor Act dealing with sales of businesses.

48. As noted above, counsel for Mr. Baker asserted that the evidence establishes that a sale of a business occurred between Student Media, on the one hand, and Campus Publications, on the other. Counsel argues that, in accordance with section 9(1) of the Act, the employment of Ms. Polak was not terminated for the purposes of the Act, and that the employment of Ms. Polak

with Student Media is deemed to have been employment with Campus Publications for the purpose of any future calculation of Ms. Polak's length or period of employment.

49. I do not accept this analysis. The evidence adduced at the hearing does not establish that there has been a sale of all or part of a business to Campus Publications. The evidence establishes that Student Media had the benefit of a subcontract from Campus Publications. That subcontract provided it with the right to canvass businesses in the community to advertise in university and college publications represented by Campus Publications. The subcontracting relationship between Campus Publications and Student Media continued until June 10, 2010, at which time the subcontract was brought to an end by Campus Publications. At that point, Campus Publications reacquired for its own use the right to canvass businesses in the community to advertise in certain university and college publications.

50. In my view, the return to Campus Publications of that right did not establish a "sale" for the purpose of section 9 of the Act. Even on a broad, purposive reading of the word "sells" contained in section 9(3) of the Act, nothing of any significance was sold by Student Media to Campus Publications in or around June, 2010. Campus Publications at all times held the contractual rights to deal with the educational institutions it represented and the entities that agreed to advertise in university or college publications. Accordingly, none of those assets were transferred from Student Media to Campus Publications at any time. The evidence did not clearly establish the ultimate disposition of the two computer systems, the phone system and the furniture located in the office space occupied by Student Media. However, even if I were to assume that those assets were taken by Campus Publications in June, 2010, that acquisition would establish only that certain assets were transferred to Campus Publications from Student Media. None of those assets reflect all or part of the "business" of Student Media.

51. There is no evidence before me to establish that Student Media sold, leased, transferred or disposed of all or part of its business to Campus Publications at any time. Accordingly, I reject the assertion made by Mr. Baker that section 9 of the Act applies in the circumstances.

Disposition

52. For the reasons set out above, Ms. Polak is entitled to eight weeks termination pay in the amount of $4,092.00. Ms. Polak is also entitled to 4% vacation pay on that sum, which totals $163.68.

53. Mr. Baker is directed to pay $4,255.68 to the Director of Employment Standards in trust on behalf of Ms. Jennifer Polak within thirty (30) days of the date of this decision, failing which this decision shall become an Order to Pay and an administration fee of 10% shall be added to the required payment.

3119-11-G Labourers' International Union of North America, Ontario Provincial District Council with its affiliated Local Union, Universal Workers Union, L.I.U.N.A. Local 183, Applicants v. **PNR Railworks Inc.**, Responding Party.

Construction Industry Grievance – Practice and Procedure – When a first grievance was dismissed by the Board on the basis of a preliminary motion brought by the responding party (an improper filing contrary to earlier Minutes of Settlement that required the OPDC alone, or the OPDC *and* a Local to initiate a grievance against the responding party), LIUNA OPDC and Local 183 immediately launched a second grievance – The Board considered whether it should accept the grievance referral – The responding party asserted the grievance ought to be dismissed as an abuse of process or on the basis of the doctrine of *res judicata* because the two applicants had the opportunity to litigate the issues in dispute in the context of the first grievance – The applicants argued that the second grievance is properly before the Board because the parties had not been in agreement in their interpretation of the effect of the Minutes of Settlement; the Board in fact had to make that threshold ruling before the merits of the grievance could be addressed – Since the applicants lost the first grievance on a preliminary motion, the launching of the second grievance could not be said to violate the principles of judicial economy, finality and the integrity of the administration of justice – The Board held that the doctrine of *res judicata* was inapplicable to the circumstances of this proceeding; however the doctrine of abuse of process and the Board's discretion to accept a grievance referral led the Board to a different conclusion – The Board held that it ought not readily grant a party an opportunity to cooper up a deficient application in circumstances where the deficiency was one that could have been avoided with due care in the first place – Application dismissed

BEFORE: *Lee Shouldice*, Vice-Chair.

DECISION OF THE BOARD: March 30, 2012

I. Introduction

1. This is a referral of a grievance to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act").

2. A grievance (the "first grievance") almost identical to the grievance filed in this proceeding was previously referred to the Board for adjudication by Universal Workers Union, L.I.U.N.A. Local 183 ("Local 183"). The first grievance was assigned Board File No. 2459-11-G. It came on for hearing before a three-person panel of the Board chaired by this Vice-Chair on November 22, 2011. That panel of the Board heard one day of evidence and argument on certain preliminary motions raised in the response filed by the responding party ("PNR"). A decision dismissing the first grievance on the basis of one of those preliminary motions was issued by that panel of the Board on December 5, 2011.

3. The instant grievance (at times referred to as the "second grievance") followed. There are two applicants in this proceeding, namely Local 183 and the Labourers' International Union of North America, Ontario Provincial District Council ("the OPDC"). The applicants delivered the second grievance to PNR on December 12, 2011. The second grievance was then referred to the Board for arbitration on December 21, 2011. Counsel for PNR filed correspondence on

December 22, 2011 objecting to the referral of the second grievance to the Board. In particular, counsel for PNR asserted that the grievance referral ought to be dismissed as an abuse of the Board's processes or on the basis of *res judicata*. Counsel for the applicants subsequently filed correspondence with the Board disagreeing with that assertion.

4. By decision dated December 29, 2011, I cancelled the hearing scheduled for January 12, 2012 and asked the parties to file written submissions regarding the application of the doctrines of abuse of process and *res judicata* to the circumstances. Each party was directed to deliver to the others and to file with the Board its full written submissions regarding the applicability of the doctrines of abuse of process and *res judicata* no later Friday, January 6, 2012. Any response to an opposing party's initial submission was to be delivered to the other parties and filed with the Board no later than Friday, January 13, 2012. The parties filed submissions in accordance with the above-referenced timetable. Further submissions were subsequently filed by counsel. By way of decision dated February 8, 2012, counsel for Local 183 and the OPDC was given the final opportunity to file submissions in response to those previously filed by PNR. He subsequently did so. By February 13, 2012, the parties had delivered their submissions to the other parties and had filed them with the Board.

II. Background Facts

5. On October 25, 2011, the first grievance was referred to the Board for adjudication by Local 183. As noted above, the first grievance came on for hearing before the Board on November 22, 2011.

6. One of the issues raised by PNR at the hearing of the first grievance was whether the grievance had been properly referred to the Board. PNR, Local 183 and the OPDC had previously entered into a Memorandum of Agreement dated July 11, 2011 ("the MOA") in which the parties stipulated that only the OPDC or a local and the OPDC could initiate grievances against PNR under the collective agreement. Having regard to the terms of the MOA, PNR asserted that Local 183 had no standing to refer the first grievance to the Board for arbitration.

7. The Board dismissed the first grievance by way of decision dated December 5, 2011. The following passage from that decision explains the reasoning behind the Board's decision:

> 7. It is evident from the MOA that one of the issues raised by PNR in this proceeding, namely the authority of Local 183 to initiate a grievance under the terms of the collective agreement, was raised by PNR previously in Board File No. 1122-11-G. The issue was resolved as amongst the parties to that proceeding and by the OPDC by way of the MOA. There is no dispute that the agreement reached by the OPDC, Local 183 and PNR on July 11, 2011 mandates that any grievance brought under the collective agreement is to be initiated either by the OPDC or by the OPDC and one of its identified affiliated locals. There is also no dispute that the grievance in the instant application was initiated only by Local 183. Starting from the filing of the grievance on October 5, 2011, the OPDC has been given notice of this proceeding, and of all steps and positions taken by both Local

183 and PNR. The Board has also copied the OPDC on all of its communications to the parties. Notwithstanding that notice, the OPDC has taken no steps to participate in this proceeding.

8. In these circumstances, counsel for PNR asserted that this grievance must be dismissed, because it was initiated and referred to the Board by Local 183 in contravention of the MOA. Counsel for Local 183 disagreed. He asserted during argument that the MOA does not identify on its face any consequence should its terms be violated by a party, and therefore could not result in the dismissal of this proceeding. In the alternative, counsel for Local 183 requested that the Board provide leave to add the OPDC as an applicant in accordance with either section 112 or 123 of the Act, so that the grievance referral could continue without delay. In reply, counsel for PNR noted that the MOA is enforceable as an agreement whether or not there is any sanction identified on its face for a violation of its terms. He further submitted that neither section 112 nor section 123 of the Act applied in the circumstances, and questioned how Local 183 could request that the OPDC be added as a party, without at the very least providing notice to the OPDC of that request.

9. Assuming, without finding, that Local 183 could have filed this grievance referral with the Board as a party to the collective agreement, there is no dispute that on July 11, 2011, it and the OPDC agreed with PNR that any grievance relating to PNR by Local 183 would only be initiated by the OPDC or by the OPDC together with Local 183. In this regard, we note that Local 183 did not assert during argument that the words "or a local with the OPDC" meant anything other than what PNR asserted they meant, namely the OPDC together with one of its locals.

10. Although the other local unions of the OPDC did not sign the MOA, Local 183 did. The MOA binds Local 183, and counsel for Local 183 did not identify any valid reason during argument why the MOA ought not to continue to bind his client. In the absence of any such reason, we are of the view that Local 183 ought to be held to its bargain. Local 183 did not initiate the underlying grievance in this proceeding in conjunction with the OPDC, as required by the terms of the MOA. As noted above, the OPDC was given notice of this proceeding, and of the arguments being made by PNR, and has chosen not to intervene or to participate in this proceeding.

11. The suggestion that the OPDC be added as an applicant to this proceeding pursuant to section 112 or section 123 of the Act does not assist Local 183. It is not evident at all that Local 183 is in the position to request that another entity be added as an applicant to a Board proceeding without the express consent of that entity. It is also not evident that either section 112 or section 123 has application in the circumstances. No defect of form or technical irregularity is reflected by the application before us, and it does not appear to us that a mistake

> has been made in good faith on the part of any party or potential party to this proceeding. As noted above, the OPDC was given notice of this proceeding, and has been copied on every document exchanged between the parties and every document sent by the Board to the parties. The OPDC has been aware of the issues raised by PNR, is aware of the terms of the MOA, and has chosen to do nothing. In these circumstances, it is difficult to characterize the absence of the OPDC as a "mistake".
>
> 12. Having regard to the terms of the MOA, we are of the view that this grievance was initiated improperly by Local 183. We are not prepared to accept the referral pursuant to subsection 133(4) of the Act, and dismiss the application.

At no time did Local 183 seek reconsideration of the December 5, 2011 decision. Instead, the second grievance followed, and it was referred to the Board for arbitration on December 21, 2011.

III. The Positions of the Parties

8. As noted above, PNR asserts that this grievance referral ought to be dismissed as an abuse of the Board's processes or on the basis of the doctrine of *res judicata*. It also asserts, as an alternative argument, that the Board should exercise its discretion pursuant to subsection 133(4) of the Act to refuse to accept the referral of the second grievance. I summarize below the most relevant arguments made by PNR, on the one hand, and by Local 183 and the OPDC, on the other. I have not set out the detailed submissions made by the parties with respect to the doctrine of *res judicata* because (as will become evident below) I agree with the position taken by Local 183 and the OPDC that the doctrine clearly does not apply in the circumstances reflected by this proceeding.

9. PNR states that it is improper for Local 183 and the OPDC to bring the same grievance before the Board a second time. It notes that the December 5, 2011 decision states on three different occasions that had the OPDC wished to authorize the filing and referral of the first grievance, it could have easily done so. It further notes that the Board expressly found in its decision that it was difficult to characterize the absence of the OPDC to that proceeding as a mistake. Accordingly, PNR asserts that it is clear that the OPDC expressly chose not to participate in the hearing of the first grievance, notwithstanding its obligation under the MOA to do so. In that light, PNR states that it is an abuse of the Board's processes for the OPDC to now join Local 183 as an applicant in this proceeding in order to refer the very same grievance to the Board for arbitration a second time.

10. PNR relies upon the decision of Arbitrator Barton in *Pharma Plus Drugmarts Ltd.*, (1991), 20 L.A.C. (4th) 251. It acknowledges that the facts of that arbitration differ from those before the Board. However, it asserts that the principles identified by Arbitrator Barton in *Pharma Plus* are applicable to the instant application. In *Pharma Plus*, a union grieved with respect to the question of whether a particular employee was entitled to a certain wage increase. The previous year the union had gone to arbitration for the same grievor regarding the very same

wage increase. That grievance was determined by an arbitrator. The grievor was dissatisfied with the first arbitrator's decision. When the same issue arose the next year, the employee grieved once again, and the grievance was referred to arbitration before Arbitrator Barton.

11. Arbitrator Barton ultimately exercised his discretion against proceeding with the grievance. In the course of his reasons, he comments upon the doctrines of *res judicata* and abuse of process. He stated the following at paragraphs 7 to 9 of his reasons:

> 7. Another aspect of *res judicata* which seems to have developed is one of abuse of process. This broader aspect of *res judicata* essentially means that if parties had a fair opportunity to litigate a particular issue they will not be allowed to relitigate the same issue later. …
>
> 8. All of these doctrines have a number of different purposes. One of the major purposes of them is to force parties to put their full attention to proper presentation of the first case. They are not allowed to split up the case and have two tries at it.
>
> 9. A further reason for the doctrines of *res judicata* is that people should be allowed to forget about the past and get on with the future. They are entitled to know where they stand with respect to a particular problem and once it has been resolved are entitled to go on and use the resolution of it as a guide to how to conduct their affairs in the future.

12. PNR argues that both Local 183 and the OPDC had a fair opportunity to litigate the issues raised in the second grievance when the first grievance was before the Board. It states that the OPDC simply did not authorize the first grievance and chose not to participate in its referral to the Board. In those circumstances, and in accordance with the agreement of the parties reflected by the MOA, the Board properly dismissed the grievance. Given that both Local 183 and the OPDC had a fair opportunity to litigate the issues in dispute in the context of the first grievance, PNR argues that in accordance with the doctrines of *res judicata* and abuse of process, they should not be given a fresh opportunity to do so.

13. In further reference to the *Pharma Plus* decision, PNR argues that the comments made by Arbitrator Barton to the effect that "people should be allowed to forget about the past and get on with the future" highlights the significant value attached to the finality of litigation between parties. In light of the fact that the decision by the OPDC to not participate in the first grievance did not appear to the Board to be a mistake or an innocent defect (such that any dismissal by the Board would have been made without prejudice to the right of Local 183 and the OPDC to file a subsequent application), PNR argues that the need for finality also grounds its request to have this application dismissed.

14. PNR asserts as an alternative argument that the Board should exercise its discretion under subsection 133(4) of the Act to refuse to accept the referral of the second grievance. It relies upon *Catalytic Maintenance Inc.*, [1987] OLRB Rep. November 1353 in support of its position. In that decision, the Board refused to entertain a second work assignment application

referable to the same work in dispute when the first complaint was dismissed because the complainants failed to appear at a scheduled hearing.

15. The Board determined that the doctrine of *res judicata* did not apply to the circumstances before it, but refused to entertain the application on the basis that it had the general discretion to do so under what is now section 99 of the Act. In determining to exercise that discretion, the Board (at paragraph 10) relied upon the fact that the complainants had the opportunity to have the earlier complaint adjudicated on the merits but lost that opportunity solely because of their own failure to attend at the scheduled hearing. At paragraph 13 of its decision, the Board made the following observations:

> The Board is not persuaded by any of the arguments advanced by the complainants that, by reopening the subject matter of the original complaint, any good industrial relations purpose would be served which would outweigh the benefit obtained by the avoidance of delays in starting Board hearings caused by the absence of a party or by a party not being willing or prepared to proceed. Nor is the Board satisfied that reopening the subject matter of the original complaint would serve any good labour relations purpose which would outweigh the need for certainty and finality in the Board's decisions. Therefore, having regard for the fact that the complainants' opportunity to have the complaint adjudicated on the merits in the first instance was lost by their own inadvertence and pursuant to the Board's general discretion under subsection 1 of section 91 of the Act, the Board declines to entertain this complaint.

16. PNR also relies upon similar observations made by the Board in *M. Sullivan and Son Limited*, [1979] OLRB Rep. January 58. In that case, four individuals had been laid off from their employment. There were assertions made by the union in that proceeding that the layoffs had been made in contravention of what is now section 72 of the Act. The union failed to appear at the scheduled hearing, and the panel of the Board that was assigned to hear the application dismissed the complaint as a result. On that same date and shortly thereafter two separate complaints were filed with the Board that, when taken together, were almost identical in substance to the original complaint.

17. The union argued that it had not received the Notice of Hearing with respect to the dismissed proceeding. The Board acknowledged that a party should not be precluded from a hearing on the merits on that basis, and heard testimony from the union regarding its receipt of the Notice of Hearing. The Board concluded that the union had not established that it had not received the Notice of Hearing in the ordinary course.

18. Before exercising its discretion to dismiss, the Board considered a number of factors, including the fact that speed is generally of the essence in labour relations matters, the serious prejudice that may be caused by delay, the reasons for non-attendance, and the nature of the complaint. After considering all of the relevant factors before it, the Board reached the following conclusion at paragraph 26 of its decision:

> In the interests of sound industrial relations policy and the orderly administration of the Act, we are of the view that parties must take care to ensure that they attend at scheduled Board hearings. We are also of the view that where a complaint is dismissed because of a failure of a complainant to attend at the hearing, or a complaint is upheld in the absence of the respondent, as a general principle the Board should not permit the subject matter of the complaint to be re-opened unless sufficient grounds for so doing have been advanced by the absent party. In the instant case we are not satisfied that the factors considered above provide such grounds. Accordingly, we are of the view that the Board should not now inquire into the subject matter of the original complaint.

19. PNR asserts that the common sense approach exhibited by the Board in the two cases set out above ought to be applied to the circumstances facing the Board in this proceeding. It reiterates that the OPDC received more than sufficient notice of the prior hearing, but chose not to participate in that proceeding. The prior proceeding involved a full day of hearing and PNR argues that it ought not to be required to repeat it. It states that neither the OPDC nor Local 183 has suggested any good industrial relations purpose that would be served by allowing the second grievance to proceed to arbitration. PNR asserts that the Board "should not countenance the gross misuse of public resources" by Local 183 and the OPDC by reopening the subject matter of the first grievance. To do so, it is submitted, would be wholly inconsistent with labour relations policy and the law.

20. In summary, PNR notes that the decision dated December 5, 2011 was not subject to reconsideration and continues to stand. The first grievance has been dismissed, and on the grounds identified above PNR states that it is improper for Local 183 and the OPDC to file and litigate that very same grievance a second time.

21. Local 183 and the OPDC view things considerably differently. They assert that each party's understanding of the MOA and its implications for the grievance procedure under the applicable collective agreement had not been tested in litigation prior to the December 5, 2011 decision. They assert that each party presented a different interpretation of the MOA to the Board, and that the Board issued a decision after considering the arguments made, ultimately accepting the interpretation of PNR over that of Local 183, and dismissing the grievance. Local 183 and the OPDC state that after reviewing the Board's decision, they immediately corrected the procedural defect by filing a new grievance. They state that such a response is properly "part of the normal litigation process" and not an abuse of process or an act that ought to attract the exercise of the Board's discretion to refuse to accept the referral.

22. Counsel for Local 183 and the OPDC notes that the Supreme Court ot Canada recently considered the doctrine of abuse of process in *City of Toronto v. CUPE, Local 79*, [2003] 3 S.C.R. 77. He relies upon the following passage from the judgement of Madam Justice Arbour, speaking for the majority of the Court:

> 37. In the context that interests us here, the doctrine of abuse of process engages "the inherent power of the court to prevent the misuse of its procedure, in a way that would . . . bring the administration of

> justice into disrepute" (*Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, *per* Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63)). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
>> The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).
>>
>> One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added.]
>
> As Goudge J.A.'s comments indicate, Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice. (See, for example, *Franco v. White* (2001), 53 O.R. (3d) 391 (C.A.); *Bomac Construction Ltd. v. Stevenson*, [1986] 5 W.W.R. 21 (Sask. C.A.); and *Bjarnarson v. Government of Manitoba* (1987), 38 D.L.R. (4th) 32 (Man. Q.B.), aff'd (1987), 21 C.P.C. (2d) 302 (Man. C.A.).) This has resulted in some criticism, on the ground that the doctrine of abuse of process by relitigation is in effect non-mutual issue estoppel by another name without the important qualifications recognized by the American courts as part and parcel of the general doctrine of non-mutual issue estoppel (Watson, *supra*, at pp. 624-25).

23. Local 183 and the OPDC submit that the circumstances present in the instant proceeding do not violate the principles of judicial economy, finality and the integrity of the administration of justice. Counsel asserts that Local 183 and the OPDC are not seeking to relitigate the issue of whether the first grievance was properly initiated. They acknowledge that it was not. Accordingly, it is asserted that there is no risk that one proceeding may yield more or less accurate results than the other on the same issue, there is no risk that the Board's resources will be wasted on the relitigation of the same issue resulting in the same outcome, and there is no risk that the relitigation of the same issue will result in inconsistent decisions. Counsel further argues that there is no risk to the credibility of the Board's processes.

24. Counsel for the applicants observes in his submissions that the panel of the Board that was convened to hear the first grievance heard evidence from the parties regarding a preliminary motion relating to timeliness. He submits that any concern that the Board may have regarding

the unnecessary waste of resources regarding that issue can be dealt with by having that panel of the Board issue a decision on the timeliness issue. Counsel cites in support of his clients' position the decision of the Ontario Court of Appeal in *Prior et al. and Canadian Timken et al.* [1973] 1 O.R. 817. In that decision, the Court allowed a grievance to be relitigated when the award of a board of arbitration could not issue because the chair of the board had died before he could consider the dissenting member's opinion.

25. Counsel for Local 183 and the OPDC asserts that the principle of finality will not be violated should the second grievance proceed. He relies upon the decision of Arbitrator McNamee in *Maple Leaf Consumer Foods Inc., Courtland Facility*, (2011), 205 L.A.C. (4th) 117. In *Maple Leaf Consumer Foods*, the union withdrew an accommodation grievance filed on behalf of a union member in 2008 after the grievor had entered a labour market re-entry program. The union re-filed the grievance in 2010 after the grievor had completed the labour market re-entry program because the employer attempted to terminate the employment of the grievor on the basis of a deemed termination provision, relying upon the prolonged absence of the employee.

26. After reviewing the applicable arbitral jurisprudence, Arbitrator McNamee states the following at paragraph 35 of his decision:

> In light of the foregoing review, I conclude that there is no absolute rule against the litigation of a grievance which is identical in substance to a prior withdrawn or abandoned grievance, and that the circumstances attendant upon the withdrawal or abandonment give colour to the manner in which it should be viewed. As such, I adopt the views of Arbitrator Burkett in *Re Saint-Gobain Abrasives* as set out above. While it is important, in the interests of sound industrial relations, to discourage the litigation of settled issues, the withdrawal or abandonment of a grievance does not always reflect agreement with the position of the opposing side. It may well be that there is a presumption that a grievance withdrawal or abandonment signals a concession of the issue raised, especially when the grievance has been dealt with by a senior official of the grieving party, but it is also possible that the circumstances surrounding the non-pursuit of the grievance indicate that the party had another motive in failing to proceed. In such circumstances, the withdrawing party should not be prevented from litigating a legitimate issue unless, by its actions, it has induced the other side to change its position – thus creating an estoppel – or unless the withdrawal constituted all or part of the consideration for a negotiated settlement.

Arbitrator McNamee concluded that the withdrawal of the grievance in 2008 could not be interpreted as an acceptance of the employer's position because the remedy sought at that time was not necessary while the grievor was in the labour market re-entry program. There was no evidence of prejudice on the part of the employer, and the grievance was permitted to proceed.

27. Counsel for Local 183 and the OPDC argues that the circumstances surrounding the absence of the OPDC in the first grievance do not suggest that either the OPDC or Local 183

ever intended to discontinue the pursuit of the grievance. He argues that the OPDC has been involved with attempts to resolve the grievance from the time that the issues were first brought to its attention, and that the absence of the OPDC was not an admission on the part of it or Local 183 that the grievance was conceded or abandoned. Furthermore, counsel argues that at no time did the actions of the OPDC or Local 183 induce PNR to change its position or to conclude that the matter was settled or abandoned. He also notes that there is no evidence that PNR relied upon the absence of the OPDC from the first grievance to its detriment.

28. It is asserted by Local 183 and the OPDC that the grievance in question "raises issues of significant social importance" that "must override any argument founded on the doctrine of abuse of process". He notes that there is an assertion made in the grievance that the employment of the grievor was terminated on the basis of an anti-union animus, and argues that to deny the grievor the opportunity to determine whether his rights under the Act have been violated would be inconsistent with maintaining the integrity of the grievance arbitration process and the Act.

29. In response to the positions taken by PNR, Local 183 and the OPDC state that the *Pharma Plus* decision, when read properly, does not support the proposition asserted by PNR. Counsel for Local 183 and the OPDC states that it is clear from the comments of Arbitrator Barton that the aspect of *res judicata* he relied upon, abuse of process, is concerned with principles of judicial economy, consistency finality and the administration of justice. Counsel asserts reiterated his view that those concerns do not arise in the circumstances of this proceeding. Counsel argues that his clients are not seeking to relitigate the issue that was already decided by the Board in the first grievance, and therefore that there is no concern that his clients are attempting to split up the case in order to secure two tries at the same issue. He asserts that if the second grievance were to be heard on the merits, neither the parties nor the Board would spend any more time on the issues in dispute than they would have had the first grievance proceeded on the merits. He asserts that there is no risk that the Board will waste its resources hearing the same issue twice.

30. Counsel for Local 183 and the OPDC also asserts that the observation made by the Board in the December 5, 2011 decision to the effect that it did not appear to that panel "that a mistake has been made in good faith on the part of any party or potential party to this proceeding" was made in reference only to the question of whether the circumstances before it fit within its understanding of the term "mistake" for the purpose of section 112 of the Act. He argues that PNR is incorrect in asserting that that comment means something more.

31. With reference to the MOA, Local 183 and the OPDC reiterate their initial position that the MOA did not clarify the procedures outlined in the collective agreement for referring matters to the Board. Counsel notes that there was no agreement put before the Board during the hearing of the first grievance that the parties had a shared understanding as to its meaning. Counsel states that Local 183 argued at the first grievance hearing that "there was no violation of the MOA where the OPDC had been given notice of the proceedings and all the steps and positions taken by Local 183". He also states that Local 183 argued that the MOA could not prevent the first grievance from being heard on its merits because it did not prescribe any consequences if it were to be found by the Board that the MOA had been violated.

32. Counsel argues that this was the first time that the issue of the status of Local 183 to file and refer a grievance to the arbitration had been litigated, and that the interpretation of the MOA had not previously been tested. Counsel asserts that the MOA must be distinguished from a settlement of a substantive claim where a party enters into an agreement to settle that claim in exchange for consideration, and then tries to seek further compensation through the relitigation of the same matter. He concedes that that behaviour would be clearly inappropriate. Here, however, the MOA addressed a procedural issue for which the parties had different views of its implications. In the circumstances, counsel argues that the Board's decision in the first grievance should not prevent the merits of this grievance from being heard.

33. With respect to the argument made by PNR regarding the discretion of the Board under subsection 133(4) of the Act, counsel argued that the underlying policy consideration of the Board that caused it to conclude that the complaints filed in both *Catalytic Maintenance* and *M. Sullivan and Son* ought to be dismissed was a desire on the part of the Board to ensure that parties to a Board proceeding "take the Board's processes seriously, attend them, and are prepared to proceed". Counsel argues that Local 183 did take the first grievance seriously, attended at the hearing, and was prepared to proceed. He states that the circumstances of the first grievance are best described as one in which Local 183, having attended at the hearing, had its application dismissed on a narrow procedural point, and for reasons unrelated to the merits of the dispute. Counsel, citing the decision of *Veolia Environmental Services Inc.*, [2009] OLRD No. 2633, asserts that in such circumstances the Board has agreed to hear a second application.

34. In response to the arguments made by Local 183 and the OPDC, PNR notes that at no time during the hearing of the first grievance did Local 183 adduce any evidence that it had any different interpretation of the MOA than PNR had of that same document. Counsel for PNR notes that the Board in its December 5, 2011 decision identifies that the OPDC was given notice of the proceeding and of all of the steps and positions taken by both Local 183 and PNR. PNR states that it clearly made its interpretation of the MOA known to both Local 183 and the OPDC prior to the hearing of the first grievance. Notwithstanding that notice, the OPDC took no steps to participate in the first grievance, even though it is now asserted that the OPDC had a different interpretation of the MOA.

35. With respect to the Supreme Court's decision in *City of Toronto*, cited above, counsel for PNR notes that Madam Justice Arbour stresses in the same passage relied upon by the OPDC and Local 183 that abuse of process is meant to be a "flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel". Counsel asserts that the doctrine of abuse of process is preferable for labour adjudicators to rely upon to dispose of applications such as the instant proceeding because adjudicators can take into account the myriad labour relations considerations that may arise in any given situation.

36. In that light, counsel for PNR submits that an assessment of whether an abuse of process exists should extend beyond the analysis adopted by Local 183 and the OPDC in this proceeding. It submits that sound industrial relations policy and the orderly administration of the Act requires care by parties to ensure that they attend all Board hearings, and that that is a factor to be taken into account by the Board in determining whether an abuse of process has occurred. PNR also takes issue with the assertion made by Local 183 and the OPDC that there are no risks

to the principles of judicial economy should the second grievance proceed. It notes that the first grievance hearing took a one day of hearing of a full panel of the Board, and that in the context of a Board proceeding judicial economy involves preserving the resources of both the Board and the parties. PNR argues that the integrity of the administration of justice would be jeopardized should the Board accept the second grievance.

IV. Analysis

37. As noted above, I am of the view that the doctrine of *res judicata* is inapplicable to the circumstances of this proceeding. As the Board noted in *M. Sullivan and Son Limited* and *Catalytic Maintenance Inc.*, both cited above, the disposition of an issue on its merits has been a pre-condition in those cases where the Board has relied upon the doctrine of *res judicata* to bar a new application or complaint. This same requirement has been established in a number of court and labour arbitration cases cited by Local 183 and the OPDC (see *Khirkhanan v. Khirkhanan*, (1983), 44 O.R. (2d) 476 (OHC); *Humber College of Applied Science and Technology*, (1999), 80 L.A.C. (4th) 108 (Schiff); and *Maple Leaf Meats Inc.*, (2000), 92 L.A.C. (4th) 309 (Barrett)).

38. The Board decision dated December 5, 2011 did not dispose of the first grievance on its merits. Although I appreciate that there are instances in which some adjudicators have relied upon the doctrine of *res judicata* in the absence of a prior final determination on the merits, in my view the doctrine ought not to be relied upon in the absence of such a determination. Accordingly, in the instant circumstances it is my view that the doctrine of *res judicata* ought not to be applied.

39. I turn to the application of the doctrine of abuse of process and the discretion provided to the Board pursuant to subsection 133(4) of the Act to not accept a grievance referred to the Board for arbitration. I will deal with both grounds together, because in large measure the same underlying factors are taken into account by the Board in determining whether a grievance referral filed with the Board ought not to be referred to a panel of the Board for a hearing on its merits.

40. It is important to observe at the outset that Local 183 did not request reconsideration of the Board's decision dated December 5, 2011. When a second grievance referral concerning the same subject matter is filed with the Board in the absence of a request for reconsideration relating to the earlier grievance referral, the Board can properly assume that the earlier grievance referral was properly dismissed for the reasons stated in the decision of the Board (see *M. Sullivan and Sons Limited*, cited above, at paragraph 8). Accordingly, I am entitled to assume that the dismissal reflected by the decision dated December 5, 2011 was properly effected and that Local 183 does not dispute the reasons stated for the dismissal of the first grievance.

41. I agree with counsel representing Local 183 and the OPDC that the litigation of the second grievance would not create a possibility of inconsistent results. The only determination made by the Board in the December 5, 2011 decision relates to the interpretation of the MOA. Local 183 and the OPDC do not purport to relitigate that question in the second grievance. Accordingly, there is no risk of inconsistent decisions should the second grievance be heard and determined by a panel of the Board.

42. I am not quite as sanguine as is counsel for Local 183 and the OPDC with respect to the other considerations noted in the passage from *City of Toronto*, cited earlier, and the concerns raised by PNR in its submissions filed with the Board. When the factors identified previously by the Board and by courts of law are considered in the context of the facts noted above, there is little to support the proposition that the second grievance ought to be determined by the Board on its merits.

43. The panel of the Board that issued the decision dated December 5, 2011 heard evidence from two witnesses and argument from counsel on a preliminary motion made by PNR regarding timeliness. It was not necessary for that panel of the Board to deal with the timeliness issue, because it determined that the grievance could be dismissed as a result of the failure of the OPDC to join Local 183 as an applicant in accordance with the terms of the MOA. If the second grievance is litigated, PNR will undoubtedly raise once again the question of timeliness as a preliminary issue. It would be necessary for the panel of the Board assigned to decide the second grievance to hear the evidence of those two witnesses. There is the possibility that complicated and time-consuming evidentiary issues relating to the use of prior inconsistent statements may arise in those circumstances (see, for example, *Islington Nurseries Limited*, an unreported decision in Board File No. 2771-09-R dated February 29, 2012).

44. Local 183 and the OPDC argue that the waste of public and private resources identified above can be avoided. It has invited the panel of the Board that determined the December 5, 2011 grievance to consider the evidence of the two witnesses previously heard and to issue a further decision on the timeliness motion. It relies upon the decision of the Ontario Court of Appeal in *Prior et al. and Canadian Timken et al.*, cited above, in support of its position. I should note here that in its initial letter to the Board dated December 22, 2011, PNR also invited the initial panel of the Board to engage in that exercise. It did not repeat that position in its subsequent submissions to the Board. In fact, the submission by PNR to the effect that it would be a waste of its resources to repeat the evidence heard on the first day of hearing suggests that it does not agree that the panel of the Board that heard the first grievance should issue a further decision on the timeliness issue.

45. The circumstances reflected by *Canadian Timken* are considerably different than those currently before the Board. In *Canadian Timken*, no decision issued from the initial panel of the board of arbitration due to the death of one of its members. Accordingly, there was no legal principle precluding the relitigation of the grievance before a newly constituted board of arbitration. In the instant proceeding, the situation is entirely different. A decision *did* issue from the panel of the Board assigned to hear the preliminary motions relating to the first grievance, namely the decision dated December 5, 2011.

46. That distinction is legally significant. The difficulty with adopting the approach suggested by Local 183 and the OPDC is that the panel of the Board that issued the December 5, 2011 decision is without jurisdiction to issue a further decision regarding the timeliness issue. This question was recently considered by the Ontario Court of Appeal in *Jacobs Catalytic v. International Brotherhood of Electrical Workers, Local 353*, (2009) ONCA 749 (CanLII). In *Jacobs Catalytic*, the question before the Court was whether the Board could issue

supplementary reasons for a decision in the absence of a request for reconsideration. The Court determined that the Board had no jurisdiction to do so.

47. Madam Justice Epstein, speaking for the majority of the Court, concluded that the authority granted to the Board to reconsider its decisions pursuant to subsection 114(1) of the Act does not authorize a panel of the Board to augment its reasons, to expand upon its reasons, or to issue supplementary reasons. Beyond clerical or mathematical errors, or an error in expressing the Board's intention, the Board is *functus officio* after releasing its decision in the absence of a request for reconsideration or the Board remaining seized of the proceeding for the purpose of providing further reasons for its decision.

48. Applied to the circumstances at hand, it is evident that the panel of the Board that issued the December 5, 2011 decision cannot now consider the evidence provided by the two witnesses who testified before it and issue a decision on the timeliness issue. That panel of the Board did not remain seized of the first grievance proceeding for that purpose, and there has been no request for reconsideration made by Local 183 with respect to the December 5, 2011 decision. Should that panel now issue supplementary reasons dealing with the timeliness issue, it would be doing so without statutory authority. The unsuccessful party could simply assert that the Board was without jurisdiction to issue those reasons, and the decision of the Ontario Court of Appeal in *Jacobs Catalytic* suggests that such an assertion would be correct.

49. In the circumstances it is clear that one of the consequences of litigating the second grievance will be a waste of the Board's resources, the resources of PNR, and the resources of Local 183. As noted above, there is also the possibility that complicated and time-consuming issues of evidence may arise, making the waste of resources that much greater.

50. Consideration must also be made of what is referred to by the Supreme Court of Canada in *City of Toronto*, cited above, as the effect upon the "integrity of the administration of justice" should the Board proceed to hear the second grievance. Without intending to trivialize the situation, it is unlikely that administrative justice in Ontario will be compromised in any significant way should the second grievance be permitted to proceed on its merits before a panel of the Board. This proceeding is one individual construction industry grievance referred to the Board amongst approximately 4,000 separate applications made to the Board in any given year. The Board's resources will not be meaningfully dissipated should it be determined to proceed to a hearing on the merits in this proceeding.

51. That being the case, there are broader considerations that must be taken into account. Considerations relating to the integrity of the administration of justice reflect wider concerns regarding the need to ensure that parties to Board proceedings (as counsel for Local 183 and the OPDC put it in his written submissions) "take the Board's processes seriously". Bluntly put, members of the labour relations community ought not to be left with the impression that they are entitled to a "mulligan" if they do not carefully prepare or monitor the applications they file with or participate in at the Board. In a proceeding such as this one, in which the underlying event that grounds the grievance has already taken up a day of hearing, the Board ought not to readily grant a party an opportunity to cooper up a deficient application in circumstances where the

deficiency is one that could have been avoided had reasonable attention been given to the matter in the first place.

52. In my view, such broader considerations form the basis for the analysis adopted by the Board in *Catalytic Maintenance Inc.* and *M. Sullivan and Son Limited*, both cited above. In *Catalytic Maintenance Inc.*, the Board stated that it would not hear the second application filed with the Board because no good industrial relations purpose would be served that would outweigh the benefit obtained by the avoidance of delays in starting Board hearings caused by a party being absent or not being willing or prepared to proceed. In *M. Sullivan and Son Limited*, the Board stated that it was in the interests of sound industrial relations policy and the orderly administration of the Act that parties take care to attend at scheduled Board hearings. What is evident from both of these cases is that the Board places a high value on the need for a party to its proceedings to take the necessary steps to ensure that the resources of the Board and the other parties are not wasted through lack of attention.

53. Although the instant proceeding does not involve an inadvertent failure of any party to attend at a previously scheduled hearing, the circumstances in this proceeding are broadly analogous to those in *Catalytic Maintenance* and *M. Sullivan and Son Limited*. On July 11, 2011, Local 183, the OPDC and PNR signed the MOA. As noted in the decision dated December 5, 2011, it was not disputed at the hearing of the first grievance that the MOA mandates that any grievance brought under the collective agreement is to be brought by the OPDC *and* one of its affiliated locals. Yet, even in the face of that obligation, the first grievance was lodged with PNR by Local 183 only three months later without the participation of the OPDC, and it was subsequently referred to the Board for arbitration in that same form.

54. It is noted in the December 5, 2011 decision that the OPDC had been given notice of the first grievance proceeding and of all of the steps and positions taken by both Local 183 and PNR in that proceeding, including the position taken by PNR that the OPDC ought to have been an applicant in accordance with the terms of the MOA. At the very least, Local 183 and the OPDC ought to have known that the failure of the OPDC to identify itself as having co-carriage of the grievance would be raised before the Board by PNR as a preliminary matter that could result in the dismissal of the grievance. As a result, the panel of the Board that issued the decision dated December 5, 2011 concluded that it was difficult to characterize the absence of the OPDC from that first proceeding as a mistake. In my view, counsel for Local 183 and the OPDC has characterized that reference by the Board far too narrowly in his submissions filed in this proceeding. It is evident from a plain reading of the decision dated December 5, 2011 that it appeared to the Board that the absence of the OPDC as a party to the first grievance was a considered decision made on the part of the OPDC, rather than one of inadvertence.

55. In its submissions to the Board in this proceeding, Local 183 and the OPDC explained the failure of the OPDC to participate in the first grievance by noting that each party to the MOA had a different interpretation of that document and its implications for the grievance procedure. Once the decision dated December 5, 2011 was issued by the Board, Local 183 and the OPDC state that it became clear to them what the MOA meant, and as a result the second grievance was launched by both of them and then referred to the Board.

56. With all due respect, I cannot accept the explanation raised by Local 183 and the OPDC for the failure by the OPDC to participate in the first grievance referral. One would have thought that if there were some legitimate confusion regarding the obligations on the OPDC and Local 183 arising from the MOA, the OPDC would have at the very least attended at the hearing to protect its interests. It did not do so. Moreover, the explanation raised by Local 183 and the OPDC for the failure of the OPDC to participate in the first grievance referral contradicts the finding made in paragraph 7 of the December 5, 2011 decision referred to above, namely that there was no dispute at that hearing that the MOA mandated that any grievance brought under the collective agreement must be initiated by the OPDC or by the OPDC *and*, in that instance, Local 183. Although Local 183 did argue that the MOA was unenforceable because it did not expressly identify on its face a penalty for its breach, Local 183 did *not* assert that the OPDC was not required by the terms of the MOA to be an applicant. It did not dispute that aspect of the MOA.

57. Nor did Local 183 withdraw the grievance referral in order to comply with the MOA. It is evident from the case authority relied upon by Local 183 (in particular the decision of Arbitrator McNamee in *Maple Leaf Consumer Foods*, cited above) that Local 183 could have opted to withdraw its grievance when it realized that PNR would raise as a preliminary objection the absence of the OPDC as a party. If Local 183 had then re-filed the grievance with PNR in conjunction with the OPDC, and referred that grievance to the Board, that referral almost certainly would have been properly made to the Board. Instead, Local 183 pursued the grievance at the hearing in November, 2011, and acknowledged at that hearing that the MOA by its terms required the OPDC to be a party to the grievance referral. Its only real argument at that time – one that was not persuasive to the Board - was that the MOA was unenforceable because it did not contain a specific provision identifying a penalty for its breach.

58. In light of the above, there is very little before me to support the assertion made by Local 183 and the OPDC that the Board ought to entertain the second grievance. The proper parties were not named in the referral filed with the Board relating to the first grievance. Local 183 was aware of the deficiency, as was the OPDC, and of the position taken by PNR that the grievance ought to be dismissed as a result. Instead of withdrawing the grievance referral, and then re-filing it, Local 183 determined to press on in the absence of the OPDC. Now, in the face of the dismissal of the first grievance, it asserts that it ought to be given a second opportunity to properly refer the grievance to a panel of the Board. The litigation of the second grievance will undoubtedly require a panel of the Board to hear once again the evidence of two witnesses to deal with a preliminary issue regarding timeliness. This situation is similar to those reflected by *M. Sullivan and Son Limited* and *Catalytic Maintenance Inc.*, cited above. It is in the long-run best interests of sound labour relations to require sophisticated entities such as Local 183 and the OPDC to ensure that the resources of the parties and the Board are not wasted by failing to comply with previously-agreed upon protocols.

59. Finally, I have considered the concerns raised by Local 183 and the OPDC with respect to the nature of the grievance referral, which asserts, amongst other claims, unfair labour practices on the part of PNR. Although a factor that I have considered, those concerns are not determinative. In *M. Sullivan and Son Limited*, cited above, the Board exercised its discretion and dismissed a second group of unfair labour practice complaints identical to those previously

dismissed that raised what Local 183 and the OPDC have characterized in this proceeding as "issues of significant social importance". If Local 183 and the OPDC view the underlying grievance as engaging "issues of significant social importance", both should have more carefully considered the significance of the obligations they agreed to honour by way of the MOA, and both should have pursued the first grievance in a manner consistent with those obligations. They did not do so.

V. Conclusion

60. Having regard to all of the considerations set out above, the Board is not prepared to accept this grievance referral pursuant to subsection 133(4) of the Act. This application is dismissed.

1731-10-U Anonymous Applicant, Applicant v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 40, Responding Party v. **Tobias House Attendant Care Inc.**, Intervenor.

Duty Of Fair Representation – Remedies – A previous decision found the union had violated its duty of fair representation in arbitrarily dealing with the applicant's discharge grievance – The Board considered the appropriate remedy in light of an arbitrator's decision that determined the grievance at issue was not arbitrable because of the untimely reference to arbitration by the union – The employer argued that a referral to arbitration would be contrary to *Windsor Western* – The Board found however there had been no decision on the merits by the arbitrator (only a decision that he did not have jurisdiction to hear the grievance) – The Board, having found the reason the grievance was untimely was due to the union's breach of the duty of fair representation, determined that in order for the applicant to be restored to a position he would have been in but for the union's breach, the Board must be able to direct the grievance to be arbitrated on the merits – The Board ordered the intervenor to waive any objection to time limits and the union to take the grievance to arbitration for a determination on its merits – The Board denied the applicant's request to retain counsel of his choice to represent him at the union's expense at the arbitration hearing, finding the union's relationship with the applicant was not so strained that the arbitration could not proceed in the normal course – The Board remained seized to deal with the apportionment of any compensation awarded pursuant to the arbitration award between the union and the employer

BEFORE: *Patrick Kelly*, Vice-Chair.

APPEARANCES: *Yola Grant*, the applicant and *Nancy Campbell* appearing on behalf of the applicant; *Philip Paul* and *David Amow* appearing on behalf of the responding party; *Andrew Reynolds* and *Andrew Jardine* appearing on behalf of the intervenor.

DECISION OF THE BOARD: April 12, 2012

1. This is an application under the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") alleging a breach of the duty of fair representation as described in section 74 of the Act.

2. In my decision dated August 11, 2011 I found the responding party trade union ("the union") to have violated its duty of fair representation in that it arbitrarily dealt with the applicant's termination grievance. I made the following observations about the appropriate remedy:

> 18. Subsection 48(1) of the Act contemplates that arbitration will resolve all differences between the parties, "including any question as to whether a matter is arbitrable." Subsection 48(18) states that a decision of an arbitrator or arbitration board is binding upon the parties to a collective agreement and upon the employees covered by the collective agreement who are affected by the decision.
>
> 19. The arbitrator's decision concerning [the applicant's] discharge grievance was a decision that determined the grievance was not arbitrable because of the untimely reference to arbitration by the union. It was a decision that bound the intervenor, the union and [the applicant]. Nevertheless, [the applicant] asks that the Board "re-open" his grievance and refer it to arbitration.
>
> 20. In *Windsor Western Hospital Center Inc. and Mordowanec et al.* (1986) 56 O.R. (2d) 297 a registered nurse was found by Arbitrator Palmer to have voluntarily resigned her position with the employer, and consequently her grievance alleging that she was discharged without just cause was dismissed. Subsequently, the individual brought a complaint to the Board alleging that her trade union had violated its duty of fair representation to her (as well as a complaint that the employer had violated the Act). The Board appeared to find that, based on the evidence before it, the registered nurse had been terminated. It concluded that there had been a violation of the duty of fair representation by the trade union and other violations by her employer. By way of remedy, the Board ordered the recommencement of the arbitration proceedings for the purpose of determining if the employer had just cause for termination.
>
> 21. The Board's decision was set aside on judicial review as having been made beyond its jurisdiction. In the course of his reasons on behalf of the majority of the Divisional Court, Eberle J. wrote:
>
> > 57. While recognizing that s. 89 [now s. 116] of the Ontario Act confers wide powers on the O.L.R.B., I am unable to conclude that it authorizes the O.L.R.B. to override a final and binding decision of an arbitration board under s. 44 [now s. 48]. That is an authority given only to the Divisional Court, on an application for judicial review, and is an authority which that Court can exercise only if the arbitration board has exceeded its jurisdiction. The O.L.R.B. does not, in the present

> > case, suggest that the Palmer board did that. In any event, no proceedings have ever been taken to attack the Palmer award by way of judicial review.
> >
> > 58. There is no express language in s. 89 to found the argument made by the O.L.R.B. in defence of its own jurisdiction -- nothing to suggest that s. 89 overrides s. 44; nothing to suggest that the O.L.R.B. jurisdiction exists notwithstanding the decision of an arbitration board to the contrary.
>
> 22. The intervenor submitted that, based on the analysis of the majority of the Court in *Windsor Western Hospital*, the ordering of [the applicant's] grievance to arbitration would be tantamount to overriding the Levinson award and would constitute acting beyond the jurisdiction of the Board. The intervenor contended therefore that referral to arbitration is precluded as a remedy in this matter. At this stage, I am not prepared to make a determination of that issue. I do note, however, that in the *Windsor Western Hospital* case, the arbitrator made a determination on the merits of the grievance. In the instant matter, there was no consideration of the merits of [the applicant] discharge grievance. Furthermore, referral to arbitration is normally the primary remedy of the Board in circumstances where a trade union has not taken a grievance forward for reasons that are arbitrary, discriminatory or in bad faith: see, for a recent example, *Kinmark Child and Family Services*, [2011] O.L.R.D. No. 2566, and a decision therein cited at paragraph 13, *ITE Industries*, [1980] OLRB Rep. July 1001.
>
> 23. The union suggested at the consultation that if arbitration was not the appropriate remedy, I should dismiss the application. That would deprive [the applicant] of any remedy for the breach of section 74 by the union. I decline to dismiss the application.
>
> 24. Having found a violation, I direct the parties to meet with a Labour Relations Officer for the purpose of determining the appropriate remedy in this matter. If no agreement is reached on that issue, I remain seized to deal with remedy, including the referral to arbitration or a remedy in damages.

3. The parties were unable to resolve the question of remedy, and the consultation continued on March 19, 2012.

4. At the request of the applicant at the outset of the hearing on March 19, 2012, the style of cause has been amended to protect the applicant's privacy. The responding party ("the union") did not oppose the applicant's request. However, the intervenor ("the employer" or "Tobias House") objected to any change in the style of cause on the basis that previous decisions have named the applicant and that it is not the Board's practice to grant anonymity to parties. I am not persuaded by that argument. The Board's Policy on Openness and Privacy (available on the Board's website: www.orlb.gov.on.ca) recognizes that the disclosure of personal information

in written decisions may have an impact on the life of that individual. Consequently the Board endeavours to include such information only to the extent necessary to determine the dispute. It seems to me that the applicant has a legitimate and overriding interest in protecting his reputation as a caregiver from the negative consequences of disclosing the unproven reason for his termination, particularly as the Board is not required to make any determination about the details of the applicant's termination of the reason therefore in this proceeding. Accordingly, the applicant is entitled to anonymity in this decision.

5. With respect to remedy, the applicant requests that the Board:

- order the applicant's termination grievance to arbitration for a determination on the merits;
- order the union to pay for independent counsel of the applicant's choosing to represent him at the arbitration hearing; and
- order the posting of a notice to employees in the employer's workplace citing the union for its breach of the Act.

6. In the alternative, the applicant requests damages ordered against the union.

7. The union agrees that the appropriate remedy in this case is a referral of the grievance to arbitration on the merits. The employer disagrees. The employer contends that the Board is precluded from ordering the grievance to arbitration because Arbitrator Levinson has already determined that the referral of the grievance to arbitration was untimely and that he lacked the jurisdiction to extend those time limits. In other words, the grievance was not arbitrable. The employer says the applicant has a meaningful remedy available to him, in damages against the union.

8. The employer maintains that a referral to arbitration would be to overturn the arbitrator's decision and to violate subsections 48(1), (2) and (18) of the Act, which read:

> **48.** (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, *including any question as to whether a matter is arbitrable*.
>
> (2) If a collective agreement does not contain a provision that is mentioned in subsection (1), it shall be deemed to contain a provision to the following effect:
>
>> Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, *including any question as to whether a matter is arbitrable*, or where an allegation is made that this agreement has been violated, either of the parties

> may after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chair. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chair within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chair governs.

...

(18) The decision of an arbitrator or of an arbitration board is binding,

(a) upon the parties;

(b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision;

(c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and

(d) upon the employees covered by the agreement who are affected by the decision,

and the parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision.

...

(emphasis added)

9. The employer relies upon the Divisional Court decision in *Windsor Western Hospital Center Inc.* referred to above, and relies upon several decisions of the Board in which that case was applied: *Christopher Topple*, [1991] OLRB Rep. Feb. 278; *Abitibi-Consolidated Co. of*

Canada, [2004] O.L.R.D. No 1472; *City of Toronto*, [2005] O.L.R.D. No 463 and *Major*, [2010] O.L.R.D. No. 1446. All of those Board decisions appear to involve grievances that were referred to, and decided on the merits by, an arbitrator.

10. Another duty-of-fair-representation decision of the Board cited by the employer is *Metropolitan Toronto Civic Employees' Union Local 43*, [1995] O.L.R.D. No. 4954. In that matter, an employee grieved his layoff. He, his trade union and his employer entered into a settlement. The employee believed his acceptance of the settlement was conditional. He later instructed the trade union to withdraw the settlement and proceed to arbitration, which it did. The arbitrator heard from the grievor and took into account uncontested facts and documents to arrive at the conclusion that a final settlement had been reached. As well, the arbitrator concluded that the employer had not waived its right to rely on the settlement. Accordingly, the arbitrator dismissed the grievance on the basis he had no jurisdiction to hear the matter.

11. The trade union considered judicially reviewing the arbitration award, but decided not to do so. The applicant asked the Board, among other things, to order the union to ask the arbitrator to re-open the arbitration for the purpose of setting aside the settlement. The Board declined that request for two reasons. First, citing the *Windsor Western Hospital Centre* decision, it reasoned that it had no authority to vary, overturn or otherwise review the arbitrator's decision. Secondly, the Board found that the principle of issue estoppel applied in the circumstances of the case before it. In other words, there had been a prior judicial decision (by the arbitrator) on the same issue (the settlement) that was now before the Board. For these and other reasons, the Board declined to inquire into the complaint.

12. By way of contrast, the union relies upon the decision of the Board in *Glass, Molders, Pottery, Plastics and Allied Workers International Union (AFL-CIO-CLC), and Local 28B GMP*, [1994] O.L.R.D. No 4270 ("*GMP*"). In that matter, the complainant, Bhagwan Singh, had been terminated. The union grieved, and referred the grievance pursuant to the expedited arbitration provisions of the Act. The arbitrator concluded that the referral of the grievance to arbitration was invalid by virtue of it being filed outside the mandatory statutory time limits, and further, that the employer had not waived its objection to the arbitrator's appointment. The arbitrator therefore terminated the proceeding.

13. At the hearing before the Board, the trade union in the *GMP* case admitted a breach of its statutory duty of fair representation, and submitted that the appropriate remedy was an order to override the time limits contained in the collective agreement and refer the grievance to arbitration for a determination on the merits. The complainant agreed. The intervenor employer objected, and raised essentially the same argument as Tobias House raises in the matter before me.

14. The Board found that it had jurisdiction to, and did, grant the remedy proposed by the trade union and the applicant. The Board gave the following reasons:

> 13. The Award by Arbitrator Stewart did not determine whether Mr. Singh's employment was unjustly terminated by the Company. The sole determination made by Arbitrator Stewart was that she did not have jurisdiction to hear and determine the grievance because the

Union had failed to follow in a timely manner the process contained in the Collective Agreement (as well as the process contained in the LABOUR RELATIONS ACT) for having Mr. Singh's discharge grievance arbitrated. However, it is that very failure on the part of the International which constitutes a contravention of section 69 of the Act, and which empowers this Board, under section 91 of the Act, to make an order, "despite the provisions of any collective agreement", directing the International to rectify that failure. (Thus, the facts of the present case are distinguishable from those in RE WINDSOR WESTERN HOSPITAL CENTRE INC. AND MORDOWANEC ET AL. (1986), 30 D.L.R. (4th) 573, in which a majority of a panel of the Divisional Court (with Saunders J. dissenting) held that what is now section 91(4) of the Act [then section 89(4)] does not empower the Board to order an arbitration to determine if an employer had just cause for discharging a grievor, where an arbitrator has already determined that the grievor resigned and, accordingly, was not discharged.)

14. Protection against being discharged without just cause is one of the most important benefits provided by a collective agreement. Indeed, the importance of that protection has been given express recognition in subsection 43.1(1) of the LABOUR RELATIONS ACT, which stipulates that "every collective agreement shall be deemed to provide that no employee shall be discharged or disciplined without just cause." If the Board lacks the power to direct that Mr. Singh's discharge grievance be arbitrated on its merits, Mr. Singh will be left without an effective remedy. Although the Board could order the International to pay him damages for his loss of opportunity to have his grievance arbitrated on the merits (see, for example, ANGELO RITROVATO, [1986] OLRB Rep. Oct. 1401), a very significant element of the collective agreement "just cause" protection is the arbitral power to reinstate an employee who has been discharged without just cause, as well as the arbitral power to substitute a lesser penalty if the arbitrator or arbitration board determines that the employer had cause to impose a penalty on the employee (see subsection 45(9) of the Act). If Mr. Singh is to be restored to the situation which he would have been in but for the Union's contravention of section 69 of the Act, the Board must be able to direct that his grievance be arbitrated on its merits, as would have occurred if the Union had followed in a timely manner the process contained in the Collective Agreement (or the process contained in the LABOUR RELATIONS ACT) for having Mr. Singh's discharge grievance arbitrated.

15. Such an order also restores the Company to the position it would have been in but for the Union's contravention of s. 69. If the Union had followed in a timely manner the process contained in the Collective Agreement (or the process contained in the LABOUR RELATIONS ACT) for having Mr. Singh's discharge grievance arbitrated, the Company would have been required to establish at an arbitration hearing that it had just cause to discharge Mr. Singh. If it

> did not, then (absent unusual circumstances) it have been required by an arbitration award to reinstate Mr. Singh to his previous position with full compensation. (If it had just cause for taking some disciplinary action against Mr. Singh but the arbitrator or arbitration board viewed discharge to be an excessive response, the Company would likely have been required to reinstate Mr. Singh without compensation, or with compensation for only a portion of his lost earnings.)
>
> 16. It would be neither fair to a discharged employee nor in the best interests of sound labour relations for an employer to benefit from a union's contravention of section 69 of the Act by being able to shield itself from having to establish just cause for the employee's termination, or from having to reinstate the employee (with full or partial compensation, if warranted) in the event that it did not have just cause for discharging the employee. In this regard it should be noted that in order to prevent an employer from being financially prejudiced by a union's contravention of section 69, the Board generally orders that, in the event the discharged employee's grievance is successful and the arbitrator or board of arbitration makes an order of compensation, the union must bear the burden of paying whatever compensation may be attributable to its contravention of section 69. That the International recognizes the appropriateness of such an order in the instant case is evident from its request that the Board remain seized of this application for the purpose of determining the amount of damages payable by the Union to the applicant in the event that the arbitration of the merits of the applicant's discharge grievance results in an award of compensation (and in the event the parties are unable to agree upon the portion of such compensation which should be paid by International). Deferring the determination of that issue until after the grievance has been arbitrated on its merits accords with the Board's normal practice in such matters, and reflects the practical consideration that no such determination will be required unless an arbitration award directs that compensation be paid to Mr. Singh, and unless the parties are unable to agree upon the portion of such compensation which should be paid by the International.

15. In my view, the *GMP* decision is on all fours with the matter before me. The circumstances were very similar in that there was a breach of the duty of fair representation due to the trade union's failure to make a timely referral of an employee's discharge grievance to arbitration. The arbitrator in that case, like this one, found that she did not have jurisdiction over the grievance, which effectively precluded consideration of the merits of the grievance. The same policy considerations articulated by the Board in the *GMP* case for ordering the grievance to arbitration on the merits apply in this matter. To parse the rationale in the *GMP* decision, in order for the applicant in this case to be restored to the position he would have been in but for the union's breach of section 74 of the Act, the Board must be able to direct that his grievance be arbitrated on its merits, applying the standard of just cause. Moreover the applicant is entitled to the range of available remedies at arbitration, if the grievance succeeds in whole or in part, including reinstatement.

16. Counsel for Tobias House took the position that the Board ought to prefer the reasoning in the *Metropolitan Toronto Civic Employees' Union Local 43* decision because it was decided after the *GMP* decision, and the *GMP* decision preceded the Court of Appeal's decision in *Service Employees International Union, Local 204 v. Leisureworld Nursing Homes Ltd.*, [1997] O.J. No. 4815 and the line of cases that followed the *Leisureworld* decision. I fail to see those as valid distinguishing factors, particularly as the arbitrator in the *GMP* decision appears to have anticipated the reasoning in *Leisureworld* by specifically citing the mandatory nature of the provisions of the Act and of the parties' collective agreement regarding referral to arbitration.

17. On the other hand, the decision in *Metropolitan Toronto Civic Employees' Union Local 43* is distinguishable. The Board in that case was being asked to arrive at a different factual conclusion than the arbitrator concerning the effect of the settlement. That put the Board in the position of reviewing the decision of the arbitrator, which it rightly found it had no jurisdiction to do. That is not the situation here. The Board is not taking any issue with Arbitrator Levinson's award concerning the late referral to arbitration or with the facts that led him to conclude he was without jurisdiction to hear the grievance. The Board is simply considering whether to remove the impediment to the arbitrator's jurisdiction — an impediment for which the union is responsible — so that the applicant's grievance may be considered on its merits.

18. In my view, for the same reasons and policy considerations stated in the *GMP* decision, the Board has the jurisdiction to order that the intervenor waive any objection to time limits and order the union to take the grievance to arbitration for a determination on its merits.

19. I turn to the applicant's other requests for relief. I am not inclined to require the posting of a notice to employees of Tobias House concerning the union's breach of section 74. That is an extremely rare remedy in duty of fair representation cases, and the applicant has not explained why it is necessary or appropriate in the circumstances of this case.

20. The applicant also requests the right to retain counsel of his choice to represent him, at the union's expense, at the arbitration hearing because he has lost confidence in the union. After having given this request considerable thought, I find I agree with counsel for the union's argument that it is not appropriate in the circumstances of this case. I do not think the relationship between the applicant and the union is so strained that the arbitration hearing can not proceed in the normal course, with the union taking sole carriage of the grievance. The union was negligent in failing to refer the applicant's grievance to arbitration. However, the union did not abandon the grievance, and it appears from a reading of the Levinson arbitration award that the union made a serious effort at the hearing to overcome, unsuccessfully as it turned out, the problem of the late referral to arbitration. Accordingly, I decline to make any order concerning the retention of independent legal counsel by the applicant.

21. In summary, then, in order to remedy the breach of the Act by the union, the Board hereby orders the union forthwith to submit the applicant's discharge grievance to arbitration for determination on the merits. The Board also orders the intervenor to waive any preliminary objection it might have that would preclude the grievance from being heard on its merits.

22. I remain seized to deal with the resolution of any dispute concerning the apportionment of any compensation as between the union and the employer that may be awarded pursuant to the arbitration award.

3278-09-G; 3570-09-G; 3590-09-G International Brotherhood of Electrical Workers, Local 402, Applicant v. **Tom Jones & Sons Limited**, Tom Jones Corporation and Tom Jones Construction Inc., Responding Party v. The Attorney General of Ontario, Lisgar Construction Co., General Contractors, Harbridge & Cross Limited, Eastern Construction Company Limited, Barclay Construction Limited, James Kemp Construction Limited, Van Horne Construction Limited, Trist Construction Limited, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario and Labourers' International Union of North America, Ontario Provincial District Council, Intervenors; International Brotherhood of Electrical Workers, Local 1739, Applicant v. EllisDon Corporation and Ellis-Don Ltd., Responding Party v. The Attorney General of Ontario, Lisgar Construction Co., General Contractors, Harbridge & Cross Limited, Eastern Construction Company Limited, Barclay Construction Limited, James Kemp Construction Limited, Van Horne Construction Limited, Trist Construction Limited, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario and Labourers' International Union of North America, Ontario Provincial District Council, Intervenors; International Brotherhood of Electrical Workers, Local 1739, Applicant v. Vanbots Limited, Vanbots Construction Corporation and Vanbots, a Division of Carillion Construction Inc., Responding Party v. The Attorney General of Ontario, Lisgar Construction Co., General Contractors, Harbridge & Cross Limited, Eastern Construction Company Limited, Barclay Construction Limited, James Kemp Construction Limited, Van Horne Construction Limited, Trist Construction Limited, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario and Labourers' International Union of North America, Ontario Provincial District Council, Intervenors.

Constitutional Law – Construction Industry Grievance – The IBEW referred three grievances to the Board and at the same time challenged the validity of earlier legislation that effectively wiped out longstanding bargaining rights by legislative fiat – The Attorney General of Ontario brought a preliminary motion to have the grievances dismissed because the constitutional challenges were predicated on the impermissible retroactive application of a Supreme Court of Canada decision in 2007 (*Health Sciences*) to legislation that had been spent or repealed long before (in 2001) – The issue concerned the legislation creating province-wide bargaining (1978) and its subsequent "deemed abandonment" (2001) and whether the Board could ascribe the Charter right to collective bargaining to a time *before* the SCC had found such a right to exist – The union sought to argue that the legal fictions created by the legislation (or removed by it) necessarily made court-made changes to the law (i.e., the recognition of the right to collective bargaining) applicable to whatever consequences the fictions created – The Board rejected the union's arguments and upheld the AG's preliminary motion – Grievances dismissed

BEFORE: *Mark J. Lewis*, Vice-Chair.

APPEARANCES: *Ron Lebi* and others appearing for the applicants; *Mark Contini, Wally Thornton* and *Rick Romkema* appearing for Ellis Don; *Mark Contini, Wally Thornton* and *Tony Vedlin* appearing for Van Bots; *Mark Contini, Wally Thornton* and *Brian Foote* appearing for Tom Jones; *Rochelle Fox, Robert Charney* and *Karen Enssien* appearing for The Attorney General of Ontario; *Benjamin A. Barnes* appearing for the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario and the Labourers International Union of North America, Ontario Provincial District Counsel; *Genevieve Debane, Tom Howell* and *Brian Foote* appearing for the intervenor companies.

DECISION OF THE BOARD: March 30, 2012

1. Board File Numbers 3278-09-G, 3570-09-G and 3590-09-G are three referrals of construction industry grievances to arbitration before the Board under the provisions of section 133 of the *Labour Relations Act, 1995*, R.S.O. 1995, c.1, as amended (the "Act"). With respect to certain preliminary issues at least, including for the purposes of a preliminary motion by the Attorney General for Ontario concerning the Notices of Constitutional Question which the applicants have filed as part of these referrals, these matters have been scheduled to be heard together.

2. In Board File No. 3278-09-G the International Brotherhood of Electrical Workers Local Union 402 ("Local 402") asserts that Tom Jones and Sons Limited et al ("Tom Jones") violated the (then current) Provincial ICI Collective Agreement for electricians (and various other workers) between the Employer and Employee Bargaining Agencies effective from May 1, 2007 to April 30, 2010 (the "Collective Agreement"). In Board File Nos. 3590-09-G and 3570-09-G the International Brotherhood of Electrical Workers Local Union 1739 ("Local 1739") asserts that Vanbots Limited et al ("Vanbots") and Ellis Don Corporation et al ("Ellis Don") have, respectively, violated the Collective Agreement.

3. Obviously, in each of these three grievances and referrals, Locals 402 or 1739 (collectively, the "Unions"), which are both Affiliated Bargaining Agents of the Employee Bargaining Agency for electricians (and are therefore themselves bound to the Collective Agreement), claim that the relevant responding parties (being either Tom Jones, Vanbots or Ellis Don, collectively hereinafter referred to as the "General Contractors") are bound to the Collective Agreement. Conversely, all three of the General Contractors claim that they are only bound to the Collective Agreement in Board Area 8 (being essentially the Greater Toronto Area) as any and all other bargaining rights of the Employee Bargaining Agency and/or these Unions, for other areas of the Province, which may have once existed no longer exist (by virtue of section 160.1 of the Act and its regulations). Therefore, they assert that, since all three of the grievances relate to work outside of Board Area 8, these grievances should be dismissed.

4. In response to the General Contractors' assertions concerning the lack of bargaining rights and a binding Collective Agreement, the Unions take the position that the section of the Act and the regulations upon which the General Contractors rely for the proposition that the bargaining rights with these, and certain other, general contractors have ceased to exist (outside

of Board Area 8) should not be given effect to by the Board as they contravene section 2(d), and are not *saved* by section 1, of the *Canadian Charter of Rights and Freedoms* (the "Charter"). In each of these referrals, the Unions filed the appropriate Notices of Constitutional Questions with respect to their positions. Having received the Notices, the Attorney General for Canada chose not to participate in these matters but the Attorney General for Ontario (the "AG") chose to participate.

5. As part of its response to the Unions' positions concerning the Charter, the AG has raised a preliminary motion in which it seeks the dismissal of the Notices of Constitutional Questions on the basis that the Unions are seeking the impermissible retroactive application of a decision of the Supreme Court of Canada and/or because the requests of the Unions are moot.

6. As reflected in the style of cause, given the nature of the (constitutional) issues to be decided, various other general contractors and certain other unions also sought to intervene in these matters.

7. This decision concerns the AG's preliminary motion.

Historic Background

8. In order to understand and evaluate the issues and arguments raised in these referrals it is necessary to set out a brief history of the scheme of collective bargaining in the ICI sector of the construction industry in this Province.

9. Prior to 1978, there was no statutory scheme for unified, multi-employer, single trade, collective bargaining, in the ICI sector (or in any other sector for that matter) in Ontario. Building trades' unions (either individually or as a group/groups) would acquire bargaining rights and enter into separate collective agreements with individual employers and/or specific employer organizations, (generally) for their respective trade(s) covering various sectors of the construction industry, including the ICI sector, which were (generally) limited to a particular geographic portion of the Province (some of which eventually became the statutory Board Areas which the Board would subsequently establish). With respect to these three referrals for example, bargaining rights for electricians in the Toronto area with Ellis Don were created when it entered into a working agreement with the Construction Trades' Council of Toronto & Vicinity (of which the IBEW's Toronto local union, Local Union 353, was a member) on December 10, 1962. Similar bargaining rights were established for electricians employed by Vanbots (in Toronto) when it signed the CTCTV's working agreement on April 3, 1964. Finally, bargaining rights were established for Tom Jones' electricians when it entered into a voluntary recognition agreement with the Toronto-Central Ontario Building and Constructions Trades' Council (which included IBEW Local 353) on July 30, 1980.

10. In 1978, as a result of recommendations contained in the Frank's Report issued in 1976, the Act was amended to provide for the bargaining of single trade, multi-employer, province-wide, ICI collective agreements between ministerially designated employer and employee bargaining agencies. For electricians the EBA's were (and still are) the Electrical Trade Bargaining Agency of the Electrical Trade Contractors Association of Ontario (for the

employers) and the IBEW and the IBEW Construction Council of Ontario (for the employees). Under this statutory scheme, Locals 353, 402 and 1739, as locals of the IBEW, were from the outset (and still are) Affiliated Bargaining Agents of the Employee Bargaining Agency for electricians and are therefore bound by the Provincial ICI Collective Agreements between the EBA's.

11. Although the 1978 statutory amendments established single Provincial ICI collective agreements (for each trade) they did not extend the geographic scope of any existing bargaining rights. Therefore, by virtue of the above noted voluntary recognition agreements involving (two of) these General Contractors, Ellis Don and Vanbots were bound to the Provincial ICI Collective Agreement for electricians but only with respect to the geographic area covered by the original voluntary recognitions (being the GTA). Subject to other bargaining rights being acquired by the IBEW and/or its local unions for any other geographic areas, elsewhere in the Province they were *non-union employers*.

12. In 1979 the Act was amended again to provide for the Province-wide extension of ICI bargaining rights. Under the new amendments, employers that were (or became) bound to Provincial ICI collective agreements for any geographic portion of the Province automatically became bound to such agreements for the entire Province. As a result, and whether they realized it or not, these three (along with numerous other) General Contractors became bound to the Provincial ICI Collective Agreement for electricians, for all of Ontario, by virtue of the voluntary recognition agreements they entered into in 1962, 1964 and 1980.

13. As a result of extended litigation before this Board and elsewhere (initially and principally involving Ellis Don and the IBEW), in the mid to late 1990's it became clear to the industry as a whole, and to a number of large general contractors in particular, that contractors such as these three that had entered into *Toronto agreements* were, as a result of the 1978 and 1979 statutory amendments, in fact *union contractors*, bound to various ICI collective agreements, throughout the Province. This situation, and the concerns it raised (at least for some) with respect to the competitiveness of such general contractors (in areas of the Province beyond the GTA) led to extensive discussions involving various employer associations and construction unions and the government. Those discussions eventually resulted in section 160.1 of the Act, which was in effect between December 16, 2000 and December 15, 2001 (when it was repealed). Section 160.1 read as follows:

> SECTION 160.1 (repealed)
>
> ***Deemed abandonment of bargaining rights***
>
> **160.1** (1) The Lieutenant Governor in Council may, by regulation, deem bargaining rights held by an employee bargaining agency and its affiliated bargaining agents to be abandoned with respect to an employer or a class of employers.
>
> ***Scope of regulation***
>
> (2) A regulation made under subsection (1) may apply with respect to all of Ontario or any part or parts of it.

Effect of regulation

(3) On the day a regulation made under this section comes into force,

(a) the affiliated bargaining agents of the employee bargaining agency referred to in the regulation cease to represent the employees of the employer employed in the industrial, commercial and institutional sector of the construction industry in the area to which the regulation applies;

(b) the bargaining rights vested in the employee bargaining agency under section 156 shall not be exercised for any purpose relating to the employer or class of employers referred to in the regulation in the area to which the regulation applies; and

(c) any provincial agreement to which the employee bargaining agency is a party that bound the employer or employers in the class of employers referred to in the regulation ceases to bind them in the area to which the regulation applies.

Abandonment of rights by other means not precluded

(4) This section shall not be interpreted to preclude the abandonment of bargaining rights by other means.

14. While it was in existence, various regulations were made under and pursuant to section 160.1. The specific regulation which is relevant to these matters was Ontario Regulation 105/01 which was made on April 11, 2001 and was gazetted on April 28, 2001. It read (in part) as follows:

ONTARIO REGULATION 105/01

made under the

LABOUR RELATIONS ACT, 1995

Made: April 11, 2001

Filed: April 12, 2001

Printed in The Ontario Gazette: April 28, 2001

DEEMED ABANDONMENT OF BARGAINING RIGHTS

Definitions

1. In this Regulation,

"Board geographic area 8" means the Ontario Labour Relations Board geographic area number 8, as set out in Schedule 1; ("region geographique 8 de la Commission")

"provincial agreement" means a provincial agreement set out in Schedule 2; ("convention provinciale")

"voluntary recognition agreement" means a voluntary recognition agreement set out in Schedule 3. ("accord de reconnaissance volontaire")

Bargaining rights deemed abandoned

2. (1) Those bargaining rights relating to the industrial, commercial and institutional sector of the construction industry that are held under a provincial agreement that is binding upon an employee bargaining agency and its affiliated bargaining agents with respect to an employer that was a party to a voluntary recognition agreement shall be deemed to be abandoned with respect to all of Ontario except Board geographic area 8 if those rights,

(a) were created as a result of a voluntary recognition agreement that was made with the employer; and

(b) were extended by law to all of Ontario after that voluntary recognition agreement was made.

(2) Those bargaining rights relating to the industrial, commercial and institutional sector of the construction industry that are held under a provincial agreement that is binding upon an employee bargaining agency and its affiliated bargaining agents with respect to Tom Jones & Sons Limited shall be deemed to be abandoned with respect to all of Ontario except Board geographic area 8 if those rights,

(a) were created as a result of the agreement entered into between Tom Jones & Sons Limited and the Toronto-Central Ontario Building and Construction Trades Council, dated July 30,1980; and

(b) were extended by law to all of Ontario upon the making of that agreement.

Commencement

3. This Regulation comes into force on May 1, 2001.

> ....
>
> SCHEDULE 2
>
> PROVINCIAL AGREEMENTS
>
> 1. The provincial agreements that were entered into between the following employee bargaining agencies and employer bargaining agencies and that expire on April30, 2001 are provincial agreements for the purposes of this Regulation:
>
> ...
>
> 13. The International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario and the Electrical Trade Bargaining Agency of the Electrical Contractors Association of Ontario.
>
> ...
>
> SCHEDULE 3
>
> VOLUNTARY RECOGNITION AGREEMENTS
>
> 1. The following are the voluntary recognition agreements to which this Regulation applies:
>
> 1. The working agreement entered into between Ellis Don Ltd. and the Building and Construction Trades Council of Toronto and Vicinity, dated December 10, 1962.
>
> 2. The working agreement entered into between Vanbots Limited and the Building and Construction Trades Council of Toronto and Vicinity, dated April 3, 1964.

15. Therefore, at least on the face of section 160.1 of the Act and the above set out regulations, as of May 1, 2001 these General Contractors were no longer bound to the Provincial ICI Collective Agreement for electricians (as a result of the Toronto area voluntary recognitions) in Local 402's geographic jurisdiction (Thunder Bay) and Local 1739's geographic jurisdiction (Barrie/Georgian Bay) as they had been following the 1979, Province-wide extension, amendments to the Act.

These Grievances and Referrals

16. The three specific grievances, which were thereafter referred to arbitration before the Board, in issue here were filed on: January 22, 2010 (in the case of Board File No. 3278-09-G involving Tom Jones); March 2, 2010 (in the case of Board File No. 3570-09-G involving Ellis Don); and, March 3, 2010 (in the case of Board File No. 3590-09-G involving Vanbots). In each case the applicant Local Union asserts that the relevant responding employer is bound to the Collective Agreement in the ICI sector, in all areas of the Province, by virtue of the above set out voluntary recognition agreements and the 1978 and 1979 statutory amendments (although in the case of Ellis Don, at least, the Unions also assert that the 1962 CTCTV working agreement is not the exclusive source of bargaining rights). Further, in each case the Unions assert that the General Contractors have violated the Collective Agreement by subcontracting (electrical) work covered by the Collective Agreement to entities which are not in contractual relations with the Unions. In their referrals the Unions claim that the particular projects referred to in the grievances represent the first occasions when these General Contractors have subcontracted work non-union in their particular geographic areas since April 2001 when Regulation 105/01 came into force. These claims are denied by the General Contractors but for the purposes of this preliminary decision I have assumed the Unions' material facts to be true and provable.

17. Having referred the first of these grievances to arbitration on February 5, 2010 (Board File No. 3278-09-G) Local 402 thereafter, on February 10, 2010, filed a Notice of Constitutional Question which states (in part):

> The International Brotherhood of Electrical Workers Local 402 intends to question the constitutional validity or applicability of section 160.1 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, Sch. A. O.Reg. 105/01 and O.Reg. 429/01.
>
> ...
>
> 4. An amendment to the Labour Relations Act, 1995 made in 2000 introduced section 160.1 into that statute. Section 160.1 provided that the Lieutenant Governor in Council ("LGIC") may make a regulation deeming bargaining rights held by an employee bargaining agency and its affiliated bargaining agents to be abandoned with respect to any employer or class of employer in the ICI sector of the construction industry. Section 160.1 was repealed effective December 16, 2001.
>
> 5. Prior to its repeal, the LGIC made O.Reg. 105/01 (the "Deemed Abandonment Regulation"), which came into force on May 1, 2001. This regulation deemed bargaining rights held under 19 Provincial Agreements (including the Provincial Agreement referred to in para. 3 above) with respect to eight general contractors, including Tom Jones, to have been abandoned with respect to all of Ontario, except for Board Area 8. Subsequently, O.Reg. 105/01 was amended by O.Reg. 429/01, which deemed bargaining rights in respect of four additional construction industry employers to be abandoned (again, outside of Board Area 8).

> 6. In other words, long-established province-wide collective bargaining rights were wiped out by legislative fiat and an act of Cabinet.
>
> 7. Section 160.1 of the Labour Relations Act and O.Reg. 105/01 and O.Reg. 429/01 substantially interfere with the process of collective bargaining, which is to say the right of the affected trade unions, including Local 402, and their members, to bargain collectively – a right now recognized to be constitutionally protected under s.2(d) of the Charter of Rights and Freedoms. These provisions do so by nullifying established bargaining rights and collective agreements and by ending future collective bargaining. In fact, the offensive provisions amount to "union busting" as that term has been used by the Supreme Court of Canada in the Health Services case. These provisions cannot be justified under s.1 of the Charter. It follows that Section 160.1 of the Labour Relations Act and O.Reg. 105/01 and O.Reg. 429/01 are constitutionally inoperative and that established bargaining rights that pre-existed Section 160.1 of the Labour Relations Act and O.Reg. 105/01 and O.Reg. 429/01 persist.

18. Similar Notices of Constitutional Question (with the obvious changes to reflect that they involve different parties with different histories) challenging the constitutionality of sections 160.1 of the Act and O. Reg 105/01 and O. Reg 429/01 (which was also passed pursuant to section 160.1 but is not directly relevant to these three grievances/referrals) were subsequently filed by the Unions with respect to the other two referrals.

19. In response to these Notices, the AG took the following preliminary position:

> 3. The Intervenor, the Attorney General of Ontario, requests that the Board dismiss the IBEW's Notices of Constitutional Question since: (i) the constitutional challenges are predicated on the impermissible retroactive application of the Supreme Court of Canada's 2007 decision in Health Services to legislation which was repealed and/or spent and terminated some, of the IBEW's bargaining rights in May 2001 and February 2002 prior to the Health Services decision; and/ or (ii) the IBEW's Notices of Constitutional Question are moot and the Board should decline to exercise its discretion to hear these moot constitutional challenges.

Positions of the Parties

20. The core of the Unions' case concerning the bargaining rights/Collective Agreement can be summarised relatively simply.

21. Prior to 2001 bargaining rights existed with these General Contractors for all of Ontario and they were bound to the Provincial ICI Collective Agreement for electricians in all geographic areas. In 2001, section 160.1 of the Act and O. Reg 105/01 and O. Reg 429/01 substantially interfered with the Unions' and their members' rights to bargain collectively by

eliminating the existing bargaining rights and the Collective Agreement(s) with these employers for all of Ontario other than Board Area No. 8. The Unions assert that as a result of the decision of the Supreme Court of Canada in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, the right to bargain collectively is now constitutionally protected under section 2(d), freedom of association, of the Charter and that the elimination of bargaining rights and large portions of collective agreements (with certain employers) brought about by section 160.1 and its regulations constitutes a blatant infringement of the section 2(d) rights which is not saved by section 1 of the Charter. Accordingly, they argue that the Board should find section 160.1 and its regulations to be constitutionally inoperative in determining whether these General Contractors are bound to the Collective Agreement as asserted in these grievances/referrals.

22. At this point in these proceedings the actual validity of the Unions' case concerning the Charter and its effect on section 160.1 of the Act and its regulations is not in issue. For the purposes of this preliminary motion it must be assumed that the Unions have made out their case concerning what the law now is. Rather, what is in issue at this point in time, pursuant to the AG's preliminary motion, is the issue of whether or not the Unions could be entitled to the remedies which they are seeking in these referrals based on the law as it now is (or rather is assumed to be according to the Unions) given what all of these parties agree was the state of the law in 2001 when section 160.1 and its regulations were in effect. The AG sums up its position concerning the question to be decided as follows:

> 27. At issue on this preliminary motion is not whether the Board has the jurisdiction to consider and apply the Charter and provide a Charter remedy when resolving matters properly before it. The law is clear that the Board is required to respect the supremacy of the Constitution as expressed in s.52(1) of the Constitution Act, 1982 and has the jurisdiction to subject its enabling statute to Charter scrutiny.
>
> ***Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5; R. v. *Conway*, 2010 SCC 22**
>
> 28. Rather, the issue is whether the Board can find the deemed abandonment of bargaining rights in 2001 through the operation of legislation, which has been repealed or is spent, to be unconstitutional even though the established state of the law at that time was that collective bargaining was not constitutionally protected. To do so, the IBEW must have this Board apply the Health Services decision retroactively to the abandonment of its bargaining rights, which occurred in 2001, and thus provide a retroactive remedy.

23. Thereafter, the AG (broadly) sets out its position concerning the preliminary issue to be decided at paragraphs 29 and 30 of its Factum, which state:

> 29. A retroactive application of Health Services would have the Supreme Court's interpretation of s.2(d) of the Charter in that case operate as of a time prior to the decision's pronouncement.

> ***Benner v. Canada (Secretary of State)*, [1997] 1 S.C.R. 358 at para. 39. *Mack v. Canada (Attorney General)*, [2002] O.J. No. 3488 (CA).**
>
> 30. The Attorney General of Ontario submits that retroactively applying the Health Services decision to past legislative provisions, which have been repealed and/or are spent, is contrary to: (i) the Supreme Court of Canada's decision in *Canada (Attorney General) v. Hislop*, (ii) the principle of the rule of law, and (iii) the principles underlying the *de facto* doctrine.

24. As the above quoted paragraphs make clear the AG's preliminary position is based principally on the decision of the Supreme Court of Canada in *Canada (Attorney General) v. Hislop,* [2007] 1 S.C.R. 429, a complex case/decision involving section 15(1), equality rights, of the Charter and the Federal Government's regulatory actions to remedy unequal provisions of the Canada Pension Plan concerning survivor benefits. The facts and issues in *Hislop* are obviously very different from those of these referrals but in that decision the Supreme Court did provide certain clear principles concerning retroactive and retrospective remedies which the AG argues are directly applicable to these matters.

25. Specifically, in *Hislop* the Supreme Court dealt with what remedies can and/or should flow from a declaration of nullity (in *Hislop* or a finding of constitutional inoperativeness as would be the case here were the Unions to be successful). With respect to the remedial issue to be decided in *Hislop*, LeBel and Rothstein JJ. (for the majority) stated:

> E. Remedies
>
> 78. We now turn to the question of remedy. In challenging s. 72(1) of the *CPP*, the appellants seek a fully retroactive remedy. They argue that a declaration of invalidity under s. 52 of the *Constitution Act, 1982* necessarily operates back to the coming into force of s. 15 of the *Charter*. In order to determine the validity of this claim, we must first consider the nature of constitution remedies and the circumstances under which courts may limit a retroactive remedy and craft a prospective remedy. In the present appeal, we conclude that a prospective remedy would be appropriate. A retroactive remedy would be unwarranted in respect of s. 72(1) *CPP*. We will also determine the appropriate remedies in respect of s. 44(1.1) and s. 72(2) *CPP*.
>
> 79. In substance, the position of the appellants is predicated on the traditional ~ often called Blackstonian — view that judges never make law, [page463] but merely discover it. In this perspective, the courts are said to apply the law as it really was or has been rediscovered. As a consequence of the declaration of nullity, the appellants claim that they are entitled to the full benefits of the law, in conformity with an understanding of the Constitution, which is deemed to have never changed.
>
> 80. The supremacy clause, now enshrined at s. 52, is silent about the remedies which may flow from a declaration of nullity. Does it mean

> that such a declaration is always both prospective and retroactive? This does not appear to have been the position of our Court throughout the incremental development of the law of constitutional remedies after the adoption of the *Charter*. A body of jurisprudence now accepts the legitimacy of limiting the retroactive effect of a declaration of nullity and of fashioning prospective remedies in appropriate circumstances.

26. LeBel and Rothstein JJ contrasted the traditional, Blackstonian, approach concerning the role and function of the courts with the more modern approach based on the principle that Judges do not always declare what the law is (and always has been) but do, in certain circumstances, change existing law and/or make new law:

> 85. Blackstone's declaratory approach has not remained unchallenged in modern law. Commentators and courts have pointed out that judges fulfill a legitimate law-making function. Judges do not merely declare law; they also make law. These critics argue that Blackstone's view is a fiction as judges make law, especially in the common law world. See, e.g., Lord Reid, "The Judge as Law Maker" (1972-1973), 12 *J.S.P.T.L.* 22. They say such a fiction should not be turned into an ironclad principle.
>
> 86. However, this acknowledgement does not require abandoning Blackstone's declaratory approach altogether. The critique of the Blackstonian approach applies only to situations in which judges are fashioning new legal rules or principles and not when they are applying the existing law. In instances where courts apply pre-existing legal doctrine to a new set of facts, Blackstone's declaratory approach remains appropriate and remedies are necessarily retroactive. Because courts are adjudicative bodies that, in the usual course of things, are called upon to decide the legal consequences of past happenings, they generally grant remedies that are retroactive to the extent necessary to ensure that successful litigants will have the benefit of the ruling: see S. Choudhry and K. Roach, "Putting the Past Behind Us? Prospective Judicial and Legislative Constitutional Remedies" (2003), 21 *S.C.L.R.* (2d) 205, at pp. 211 and 218. There is, however, an important difference between saying that judicial decisions are *generally* retroactive and that they are *necessarily* retroactive. When the law changes through judicial intervention, courts operate outside of the Blackstonian paradigm. In those situations, it may be appropriate for the court to issue a prospective rather than a retroactive remedy. The question then becomes what kind of change and which conditions will justify the crafting of judicial prospective remedies.
>
> 87. The House of Lords recently adopted this view in the course of its discussion of prospective overruling: *In re Spectrum Plus Ltd. (in liquidation)*, [2005] 2 A.C. 680, [2005] UHKL 41. The words of Lord Nicholls at para. 34 are particularly apt:
>
> > [Blackstone's declaratory] theory is still valid when applied to cases where a previous decision is overruled as wrong when given. Most

> overruling occurs on this basis. These cases are to be contrasted with [those] where the later decision represents a response to changes in social conditions and expectations. Then, on any view, the declaratory approach is inapt. In this context [this] approach has long been discarded. It is at odds with reality.

27. The Supreme Court then goes on to provide the following direction concerning the applicability of each of these two approaches and sets out the fundamental requirements which must be present if the Blackstonian approach is to be departed from along with various reasons justifying such a departure:

> 93. The determination of whether to limit the retroactive effect of a s. 52(1) remedy and grant a purely prospective remedy will be largely determined by whether the Court is operating inside or outside the Blackstonian paradigm. When the Court is declaring the law as it has existed, then the Blackstonian approach is appropriate and retroactive relief should be granted. On the other hand, when a court is developing new law within the broad confines of the Constitution, it may be appropriate to limit the retroactive effect of its judgment.
>
> …
>
> 99. Change in the law occurs in many ways. "Clear break with the past" catches some of its diversity. It can be best identified with those situations where, in Canadian law, the Supreme Court departs from its own jurisprudence by expressly overruling or implicitly repudiating a prior decision. Such clear situations would justify recourse to prospective [page470] remedies in a proper context. But other forms of substantial change may be as relevant, especially in constitutional adjudication, where courts must give content to broad, but previously undefined, rights, principles or norms. The definition of a yet undetermined standard or the recognition that a situation is now covered by a constitutional guarantee also often expresses a substantial change in the law. The right may have been there, but it finds an expression in a new or newly recognized technological or social environment. Such a legal response to these developments properly grounds the use of prospective remedies, when the appropriate circumstances are met. A substantial change in the law is necessary, . not sufficient, to justify purely prospective remedies. Hence, we must now turn to what else must be considered once legal change has been established.
>
> 100. Although the list of such factors should not be considered as closed, some of them appear more clearly compelling. They may include reasonable or in good faith reliance by governments *(Miron*, at para. 173; *Mackin* v. *New Brunswick (Minister of Finance)*, [2002] 1 S.C.R. 405,2002 SCC 13, at para. 78), or the fairness of the limitation of the retroactivity of the remedy to the litigants. Courts ought also consider whether a retroactive remedy would unduly interfere with the constitutional role of legislatures and democratic governments in the allocation of public resources *(Benner*, at para. 103; *Schachter*, at p. 710).

101. A careful consideration of reliance interests is critical to this analytical process. Although legal mechanisms, such as the *de facto* doctrine, *res judicata* or the law of limitations, may mitigate the consequences of declaratory rulings in certain circumstances, they do not address every situation. Fully retroactive remedies might prove highly disruptive in respect of government action, which, on the basis of settled or broadly held views of the law as it stood, framed budgets or attempted to design [page471] social programs. Persons and public authorities could then become liable under a new legal norm. Neither governments nor citizens could be reasonably assured of the legal consequences of their actions at the time they are taken.

102. The strict declaratory approach also hardly appears reconcilable with the well-established doctrine of qualified immunity in respect of the adoption of unconstitutional statutes which our Court applied, for example, in cases such as *Mackin* and *Guimond v. Quebec (Attorney General),* [1996] 3 S.C.R. 347. Where legislation is found to be invalid as a result of a judicial shift in the law, it will not generally be appropriate to impose liability on the government. As Gonthier J. wrote in *Mackin,* it is a general rule of public law that "absent conduct that is clearly wrong, in bad faith or an abuse of power, the courts will not award damages for the harm suffered as a result of the mere enactment or application of a law that is subsequently declared to be unconstitutional" (para. 78). The rationale for this qualified immunity, which applies equally to actions for damages based on the general law of civil liability and to claims for damages under s. 24(1) of the *Charter,* was aptly expressed by Gonthier J.:

> Thus, the government and its representatives are required to exercise their powers in good faith and to respect the "established and indisputable" laws that define the constitutional rights of individuals. However, if they act in good faith and without abusing their power under prevailing law and only subsequently are their acts found to be unconstitutional, they will not be liable. Otherwise, the effectiveness and efficiency of government action would be excessively constrained. Laws must be given their full force and effect as long as they are not declared invalid. Thus it is only in the event of conduct that is clearly wrong, in bad faith or an abuse of power that damages may be awarded. [para. 79]

The same principles will apply in respect of claims for retroactive benefits under s. 15 of the *Charter.* [page472] Whether framed as a remedy under s. 52 or s. 24(1), it may be tantamount to a claim for compensatory damages flowing from the under inclusiveness of the legislation.

103. People generally conduct their affairs based on their understanding of what the law requires. Governments in this country are no different. Every law they pass or administrative action they take must be performed with an eye to what the Constitution requires. Just as ignorance of the law is no excuse for an individual who breaks the law, ignorance of the Constitution is no excuse for governments. But where a judicial ruling changes the existing

> law or creates new law, it may, under certain conditions, be inappropriate to hold the government retroactively liable. An approach to constitutional interpretation that makes it possible to identify, in appropriate cases, a point in time when the law changed, makes it easier to ensure that persons and legislatures who relied on the former legal rule while it prevailed will be protected. In this way, a balance is struck between the legitimate reliance interests of actors who make decisions based on a reasonable assessment of the state of the law at the relevant time on one hand and the need to allow constitutional jurisprudence to evolve over time on the other.

28. In these cases the AG, supported by the General Contractors, assert that the Unions are attempting to obtain retroactive relief in circumstances where the principles established by the Supreme Court in *Hislop* make it clear that such relief would be inappropriate and should not be granted.

29. In response to the AG's arguments the Unions take a number of overlapping and intertwined positions all supporting their fundamental position that the AG's preliminary motion should be dismissed. They argued that:

(a) the constitutionality of section 160.1 and its regulations must be assessed based on the law as it now is and not as it was in 2001;

(b) they are not seeking retroactive or retrospective relief but rather are simply seeking remedies with respect to the General Contractors being bound to and having violated the Collective Agreement in 2010 (and thereafter) with respect to the specific projects referred to in the grievances;

(c) the principles from *Hislop* on which the AG relies are not relevant in these circumstances as what they (the Unions) seek here are not remedies to redress past wrongs but rather to address the on going effects of Section 160.1 and its regulations;

(d) the principles from *Hislop* on which the AG relies are not relevant in these circumstances as that case concerned remedies under section 15 of the Charter and these cases do not;

(e) a *Hislop declaration* (involving a refusal to grant retroactive relief) is an extraordinary and discretionary exercise of the Board's powers which requires an evaluation of all of the relevant circumstances and as such, if granted at all, should only be granted at the end of a full and complete hearing (rather than as a preliminary matter); and,

(f) certain of the factors which the Supreme Court found to be critical to a refusal to grant retroactive remedies in *Hislop* (such as the reluctance to undo a carefully constructed legislative balance, delay and detrimental reliance) are not present in the circumstances of these cases.

Decision

30. In rendering a decision with respect to the AG's preliminary motion I agree with the Unions that the *law* which I must consider and apply is the state of law as it currently exists and not as existed in 2001. However, this position of the Unions, although true, appears to miss the central point of the AG's argument. The (relevant) law as it currently exists is not only the decision of the Supreme Court in *Health Services* (which, as dealt with further below, I am prepared to assume, for the purposes of this decision, represents a *clear break with the past* with respect to collective bargaining and section 2(d) rights) but also includes the decision of the Supreme Court in *Hislop.* This is because the question to be determined at this point is not whether the more recent court decisions concerning the right to collective bargaining and section 2(d) of the Charter establish that a different outcome concerning the constitutionality of section 160.1 and its regulations would (at least arguably) result if these referrals were to be decided after, and as opposed to before, 2007 when the Supreme Court issued it decision in *Health Services.* As noted above, and as the Unions assert, I assume that to be the case for the purposes of this motion. Having made that assumption, what is left to be decided is whether, in the circumstances of these three referrals, it would nevertheless still be inappropriate to grant the relief which the Unions seek, as the AG argues, precisely because the state of the law concerning collective bargaining rights and section 2(d) of the Charter is so different now from that which existed in 2001. In this respect, the AG is not, as the Unions argued, asserting the position that 2001 law should be used to judge the outcome of this case. Rather, the AG is simply asserting that in determining what remedies might be appropriate in these cases the Board should consider the principles established by the Supreme Court in *Hislop* concerning the granting of remedies where there has been a fundamental change in the law.

31. Related to the above conclusions concerning what *law* applies to the determination of these grievances is the question of what approach to the consideration of remedies is appropriate. As is clearly established in *Hislop* it is only appropriate to depart from the Blackstonian paradigm, and therefore only necessary to consider whether it may be inappropriate to grant retroactive remedies at all, if courts *have developed new law within the confines of the Constitution.* In certain (and perhaps even in the majority of) cases that determination might be difficult to make. However, for the purposes of this decision it is easy to answer this question concerning new law. In argument before me all of the parties agreed that the decision of the Supreme Court in *Health Services* represented new law within the confines of the Constitution with respect to collective bargaining rights and section 2(d) of the Charter. Specifically, they all relied on that portion of the decision of Chief Justice McLaughlin's and LeBel J's decision (writing for the Court) which explicitly states as much:

> In summary, a review of the jurisprudence leads to the conclusion that the holdings in the *Alberta Reference* and P/PSC excluding collective bargaining from the scope of s.2(d) can no longer stand. None of the reasons provided by the majorities in those cases survive scrutiny, and the rationale for excluding inherently collective activities from s.2(d)'s protection has been overtaken by *Dunmore.*

> Our rejection of the arguments previously used to exclude collective bargaining from s.2(d) leads us to a reassessment of that issue, discussed below.

32. Further, the very core of the Unions' positions as set out in the Notices of Constitutional Questions is in fact premised on a change in the law. Specifically, in their Notices the Unions explicitly refer to *a right now recognized to be constitutionally protected* and the decision in *Health Services*.

33. Having determined that these circumstances involve a *clear break with the past,* the next question to be determined involves whether the Unions are in fact seeking retroactive remedies as the AG asserts and the Unions deny.

34. I agree with the Unions that all of the specific remedies which they are seeking in these grievances/referrals (on their face) only make reference to periods after the Supreme Court's decision in *Health Services* issued in 2007. In particular, and as the Unions strenuously argued, the principal remedies which are being sought are that these three General Contractors are/were bound to the (2007-2010) Collective Agreement and have violated that Collective Agreement with respect to work which began in 2010. In this general sense, these grievances/referrals are completely silent with respect to the period between April 2001 when the applicable regulations came into effect and 2007 when the decision in *Heath Services* was issued. However, such facts are not a complete and definitive answer to the question of whether the Unions are nevertheless actually seeking retroactive remedies in the circumstances of these grievances/referrals.

35. These three matters come before the Board pursuant to section 133 of the Act under which the Board acts as a board of arbitration with jurisdiction arising out of construction industry collective agreements. In its capacity as a board of arbitration under section 133 the Board has no authority to grant bargaining rights to unions and/or to bind employers to collective agreements. Rather, in such proceedings the Board's jurisdiction is limited to declaring that bargaining rights exist (or alternatively do not exist) and/or that parties are (or are not) bound to collective agreements, and such declarations must of necessity be based on an analysis of evidence (or the lack thereof) concerning events occurring before the filing of the grievances which have been referred to the Board to arbitrate.

36. In short, in these circumstances it is simply not possible for the Board declare that these Unions hold bargaining rights and/or that these General Contractors are bound to the 2007-2010 Collective Agreement based on thin air. Rather, and as the above cited agreed to background facts concerning how these General Contractors became involved with the IBEW and any of its Local Unions establish, in determining what bargaining rights ever existed (and therefore could conceivably still exist) and/or what collective agreements and/or what portions of what collective agreements these General Contractors were bound to and therefore could conceivably be bound to in 2010 when the grievances were filed, the Board must, of necessity, analyse past events. In these specific circumstances such past events stretch back to the initial voluntary recognition agreements, the 1997 and 1998 statutory amendments and the introduction of section 160.1 of the Act in 2000 and its regulations in 2001 and all of those events obviously occurred prior to the change in the law brought about by the decision in *Health Services*. This is

not to say that, therefore, the Unions must be seeking retroactive relief. Rather, it is merely to point out that it cannot be concluded that the Unions are not seeking such relief (and are only seeking prospective remedies) simply because the grievances only specifically refer to relief commencing in 2010. Quite simply the question of whether or not the Unions are in fact seeking retroactive remedies in these grievances can only be effectively answered by analysing what occurred, *vis-à-vis* the bargaining rights and the collective agreements, as a result of past events as only such analysis can establish exactly what the Unions are, as matter of substance, asking for by way of these grievances.

37. The obvious starting point for the required analysis of the past events in these cases is the passage of the 1979 amendments to the Act establishing the Province-wide extension of ICI bargaining rights. With this introduction of these amendments, Ellis Don and Vanbots became bound to the Provincial ICI Collective Agreement for electricians for all of Ontario (which they had both been previously bound to, but only with respect to the Toronto area, as a result of the working agreements that they had signed in the 1960's and the 1978 amendments establishing single-trade, multi-employer, province-wide collective bargaining/collective agreements between ministerially designated EBA's). In the case of Tom Jones, it became similarly bound to the Provincial ICI Collective Agreement for electricians for all of Ontario when it entered into the voluntary recognition agreement with the T-COBCTC in July 30, 1980. Accordingly, as of July 30, 1980 all three of these General Contractors and these two Local Unions were bound to collective agreements covering ICI electrical work in the Thunder Bay and the Barrie/Georgian Bay areas. What is then critical to establish is exactly what happened, legally, to the non-Board Area 8 bargaining rights/collective agreement provisions with the introduction of section 160.1 and its regulations in 2001.

38. As noted previously, section 160.1 of the Act came into effect on December 16, 2000 and remained in effect until December 15, 2001. Under subsections 160.1(1) and (2) the Lieutenant Governor in Council had the authority, by regulation, to deem bargaining rights held by an Employee Bargaining Agency and its ABA's to be abandoned with respect to an employer or class of employers, for all or any parts of Ontario. There is no question that, through O.Reg. 105/1, the Lieutenant Governor in Council passed just such a regulation concerning (amongst others) the bargaining rights, held by the EBA for electricians (the IBEW and the IBEW-CCO) and its ABA's (including Locals 402 and 1739), relating to the ICI sector of the construction industry, for all of Ontario except Board Area No. 8, for those rights were created by (amongst other agreements) the 1962 Ellis Don working agreement (as specifically referred to in O.Reg. 105/1, Schedule 3 (1)), the 1964 Vanbots working agreement (as specifically referred to in O.Reg. 105/1, Schedule 3 (2)), and which were thereafter extended by law to all of Ontario (by virtue of the 1978 and 1979 statutory amendments) and the 1980 Tom Jones T-COBCTC agreement which were atomically extended by law to cover all of Ontario upon the making of that agreement. The implications on the above referenced bargaining rights/collective agreement provisions on the day that O.Reg. 105/1 came into effect (May 1, 2001) are specifically set out in subsection 160.1(3) of the Act.

39. Prior to the filing of these grievances/referrals, the constitutional validity of section 160.1 and its regulations was not challenged by the EBA, the IBEW and the IBEW-CCO, or any of its ABA's, including Locals 402 and 1739. Such a lack of immediate constitutional

challenges is in no way surprising given that, and as all of these parties agreed, prior to the decision in *Health Services,* in which the Supreme Court explicitly stated it was changing the existing law, the Supreme Court had consistently held that collective bargaining was excluded from the scope of section 2(d) of the Charter. Accordingly, prior to 2007 the existing law provided no basis upon which to realistically conclude that section 160.1 and its regulations were constitutionally inoperative.

40. Based on all of the above, the AG supported by the General Contractors argue that the bargaining rights which these Unions seek to rely upon in order to establish that these three General Contractors were bound to the Collective Agreement for all of Ontario (and not just Board Area 8) in 2010 when the grievances were filed ceased to exist in 2001. As such, and given that the impugned section has not existed since December 2001 (more than six years prior to the decision in *Health Services* and some eight years prior to the filing of the grievances), the AG and the General Contractors assert that Unions are clearly seeking retroactive remedies in these proceedings as, by requesting declarations that the General Contractors are bound to the Collective Agreement in its entirety and that they have violated that Collective Agreement with respect to work performed in 2010 in the Thunder Bay and Barrie/Georgian Bay areas, the Unions are, as a matter of substance, requesting the Board to revive bargaining rights that were lost, and collective agreements which ceased to apply, well before 2010.

41. In response, the Union asserts that the remedies that it is requesting are not retroactive ones but are purely prospective in nature as, in its view, all it is asking the Board to do in these cases is to address the ongoing effects of section 160.1 and its regulations by, in 2010, not allowing the General Contractors to rely upon, now, constitutionally invalid section of the Act and regulations as a defence to the Unions' claims that these employers are bound to the Collective Agreement beyond the confines of Board Area 8. Specifically, the Unions rely upon the provisions of the *Legislation Act 2006,* S.O. 2001, Ch.21, Schedule F to support their positions concerning the ongoing effects alleged to exist here.

42. With respect to this position concerning remedying ongoing effects, the Unions assert that, in 2001, by virtue of the combination of section 160.1, which provided the authority for the establishment of certain regulations and O.Reg. 105/1, being one of the allowed for regulations, they (amongst) others were deemed to have abandoned certain bargaining rights and that, as a result, certain portions of otherwise valid and binding collective agreements were deemed to be of no force and effect. They argue that by so doing the government of the day established a legal fiction with respect to existing bargaining rights and existing collective agreements given that no bargaining rights had actually been abandoned and that no collective agreement provisions had ever actually been restricted or modified in any way. According to the Unions, once section 160.1 ceased to exist (on December 15, 2001) the legal fiction that it, and its regulations, had established would also cease to exist, thereby restoring the pre-2001 status quo, unless there is a legal basis for the ongoing effect (in the Union's view, the government created legal fiction) to be maintained. It is the Union's view that, in this case, the basis for the ongoing legal affects of section 160.1 and its regulations, which in turn provide for the ongoing deemed abandonment of bargaining rights (which were never actually abandoned) and the deemed inapplicability of otherwise valid portions of collective agreements is provided by subsection 59(3) of the *Legislation Act* which states:

> (3) If the provision referred to is repealed or revoked, without being replaced,
>
> (a) the repealed or revoked provision continues to have effect, but only to the extent that is necessary to give effect to the Act or regulation that contains the reference; and
>
> (b) the reference is to the provision as it read immediately before the repeal or revocation.

43. Put simply and succinctly, the Unions' position is that after December 15, 2001 either section 160.1 of the Act and its regulations do not survive at all, in which case there can be no ongoing deemed abandonment and/or deemed inapplicability (and thus no defence available to the General Contractors concerning not being bound to the Collective Agreement beyond Board Area 8) or, more probably, the regulations made pursuant to section 160.1, including O.Reg. 105/1, continue to have effect (by virtue of section 59 of the *Legislation Act*) and therefore the constitutional invalidity of that ongoing effect can and should be addressed through prospective remedies.

44. The principal problem with the Unions' ongoing effects argument is that it ignores specific provisions of section 160.1 and the nature of the termination of bargaining rights. In this respect, while I accept that certain portions of section 160.1 and O.Reg. 105/1 use the term *deemed abandonment* this is clearly not the case with subsection 160.1(3) of the Act which sets out the specific consequences of the Lieutenant Governor in Council making a deemed *abandonment regulation* as was done by O.Reg. 105/1. This subsection specifically states:

> ***Effect of regulation***
>
> (3) On the day a regulation made under this section comes into force,
>
> (a) the affiliated bargaining agents of the employee bargaining agency referred to in the regulation cease to represent the employees of the employer employed in the industrial, commercial and institutional sector of the construction industry in the area to which the regulation applies;
>
> (b) the bargaining rights vested in the employee bargaining agency under section 156 shall not be exercised for any purpose relating to the employer or class of employers referred to in the regulation in the area to which the regulation applies; and
>
> (c) any provincial agreement to which the employee bargaining agency is a party that bound the employer or employers in the class of employers referred to in the

> regulation ceases to bind them in the area to which the regulation applies.

45. The plain wording of subsections 160.1(3)(a),(b) and (c) does not establish ongoing defences to claims which might be made pursuant to continuing, and otherwise valid and operative, bargaining rights and collective agreement provisions. Rather, this statutory language very clearly terminates specific bargaining rights and ends the applicability of collective agreements (with respect to certain employees of certain employers in the ICI sector of the construction industry in all, or certain areas, of the Province, as set out in any regulations made pursuant to section 160.1) on the day a section 160.1 (deemed abandonment) regulation comes into force. Providing any such regulation came into force during the period when section 160.1 formed part of the Act, as is the case with respect to O.Reg. 105/1, neither the section of the Act itself nor any of its regulations are required to stay in effect, pursuant to section 59 of the *Legislation Act* or otherwise, in order to maintain the statutorily mandated consequences set out in subsection 160.1(3).

46. Subsection 160.1(3)(a) provides a very clear example of how the Unions' suggested interpretation concerning ongoing effect is simply impossible to reconcile with the language that the legislature actually used in drafting this section of the Act. Under this subsection, as soon as a regulation came into force the applicable affiliated bargaining agents of the applicable employee bargaining agency ceased to represent the applicable employees of the applicable employer in the ICI sector of the applicable area of the province. The regulation obviously defines the applicable ABA's, EBA, employees, employer and geographic area but that is all it does and thereafter it is in effect spent as it is subsection 160.1(a) which actually terminates the bargaining rights. Further, and in this respect, bargaining rights are not terminated on an ongoing and continuing basis. Rather a union ceases to represent a group of employees of a particular employer at specific point in time and thereafter that group of employees remains unrepresented until bargaining rights are subsequently acquired by another (or the same) union. In this respect, when the Board declares, pursuant to section 63(14) of the Act for example that a union ceases to represent a particular bargaining unit as a result of a representation vote, it does not, and is not required to, thereafter repeatedly and continually make the same declaration in order to prevent the union's previous bargaining rights from being resurrected. Similarly, any bargaining rights which were terminated on a particular day by virtue of the provisions of subsection 160.1(3)(a) of the Act were not and are not resurrected unless that section of the Act and/or its regulations thereafter remain in effect. Further, exactly the same analysis relating to the coming into effect of a particular state of affairs concerning the (non) vesting of bargaining rights under section 156 of the Act and employers no longer being bound to ICI provincial agreement in certain areas of the province, on a particular, and finite, date, and which remains in effect thereafter despite the fact that the section of the Act may have been repealed and that its regulations may no longer be in force, applies equally with respect to the provisions of subsections 160.1(3)(b) and (c).

47. Accordingly, and despite the arguments of the Unions to the contrary, it is impossible to reach any other conclusion than that, by virtue of the coming into force of O.Reg. 105/1 on May 1, 2001, the Unions' bargaining rights in the ICI sector outside of Board Area 8 ceased to exist with these three General Contractors and that these General Contractors ceased to be bound to the Provincial ICI Collective Agreement for electricians for all such areas of the Province, on

that date, pursuant to the provisions of section 160.1 which at that time, but no longer, formed part of the Act. For the purposes of this preliminary motion concerning these grievances at least, the Unions do not assert that they thereafter acquired new bargaining rights which resulted in the General Contractors becoming bound, once again, to the Provincial ICI Collective Agreement for electricians for the entirety of the Province. Therefore, the only possible way for the Board to declare that these General Contractors were so bound and violated the Collective Agreement with respect to the 2010 work in the Thunder Bay and Barrie/Georgian Bay areas (as is requested) is to find that no force and effect can be given to the 2001 termination of bargaining rights/non-applicability of the Collective Agreements as section 160.1 and its regulations were constitutionally invalid. Further, as these parties agreed no such finding could have been reached on the basis of the state of the law as it existed in 2001 (and existed throughout the entire period in which section 160.1 formed part of the Act) but rather as the Unions assert (and as I accept for the purposes of this preliminary argument) such conclusions could now be reached on the basis of the new law concerning collective bargaining rights and section 2(d) of the Charter which was established when the *Health Services* decision was issued in 2007. In my view such a finding would therefore require the granting of a retroactive remedy in circumstances where there has been a *clear break with the past* as discussed in *Hislop*.

48. Such a finding does not of course end this matter. As set out in *Hislop*, a substantial change in the law is necessary, but not sufficient for the determination that only retrospective remedies should be granted. Various other factors must also be considered.

49. The Courts have not defined a complete and comprehensive list of all such other factors which may be relevant in the specific circumstances of any particular case, but have indicated that certain factors will generally be compelling and must therefore normally be considered. Based on the decision in *Hislop* such compelling factors might normally include reasonable or in good faith reliance by governments, fairness to the litigants in limiting retroactive remedies and whether a retroactive remedy might otherwise interfere with the constitutional role of the legislature and democratic governments.

50. In these circumstances there is no basis on which to conclude that the government of Ontario, in December 2000 when section 160.1 first became a part of the Act, or at any point thereafter, did not act with reasonable and good faith reliance. Prior to 2000, the issue of whether section 2(d) of the Charter includes a constitutionally protected right to collective bargaining had been considered by the Courts, and in particular by the Supreme Court of Canada, on a number of occasion. It is not disputed that, prior to the *Health Services* decision, which was issued approximately six years after the Unions' bargaining rights had ceased to exist and approximately five years after the rescinding of section 160.1, (and as the *Health Services* decision itself made clear) the well settled jurisprudence was that section 2(d) did not include any such right to collective bargaining.

51. Also the factor of fairness to the litigants does not, in these circumstances, particularly favour the Unions' request for retroactive remedies. In this respect, it must be remembered that the principal litigants in these cases do not include the government of Ontario, the entity which, if the Unions argument is to be upheld, established the constitutionally invalid section of the Act and accompanying regulations. Rather, here the principal litigants are the Unions and the

General Contractors. At all times since the termination of the bargaining rights and the limitation of the collective agreements which came about when O.Reg 105/1 came into force, the General Contractors have conducted their affairs based on the understanding that that what had occurred in 2001 was constitutionally valid. Such an understanding was entirely reasonable given the state of the law prior to 2007. Further, the manner in which the General Contractors conducted themselves is also completely consistent with the manner in which the Unions acted at all times prior to the filing of these grievances. In this respect, while I assume for the purposes of this decision that 2010 was the first time when these General Contractors had subcontracted work non-union in Local 402's and Local 1739's geographic areas, I note that the Unions did not assert that, in the period between May 1, 2001 and the filing of these grievances in early 2010, they, or their EBA or any other ABA's had ever sought to take legal action, or even provided notice that they might take legal action, to defend the prior bargaining rights/collective agreements on the basis of the constitutional invalidity of section 160.1 and its regulations.

52. In these matters the factor of the constitutional role of the legislature/ democratic governments must also be considered in conjunction with the Unions arguments that the *Hislop* principles concerning retroactive remedies were of limited assistance in these cases as they related to a consideration of section 15 equality rights, an area of the law in which the Courts have been particularly wary of granting remedies given the consequences that such decisions may have for the balancing which legislatures are required to do in determining how limited government resources should be distributed. The fact that section 15 remedies might raise particular concerns about encroaching on the legitimate role of the legislature does not, however, mean that other sections of the Charter might also raise important, if somewhat different, concerns in relation to this factor. As the Courts, and in particular the Supreme Court of Canada, have been at pains to point out in, and both before and after, *Health Services*, labour relations legislation involves a delicate balancing of multiple interests. As such, careful consideration must be paid to the legislature's constitutional right to make the decisions concerning the appropriate balancing of the relevant interest, at least at first instance, and accordingly in these circumstances where the impugned section of the Act and regulations have long since ceased to be in effect this factor also supports the refusal to grant retroactive remedies.

53. Finally, while I agree with the Unions' position that determining these referrals on the basis of the *Hislop principles* requires a consideration of all relevant circumstances I do not agree that this necessarily means that such a determination cannot and should not be made in the context of a preliminary motion. Here I have assumed all of the material facts relied upon by the Unions to be true. Accordingly this decision has been made on the Unions' best possible case and as such there is no reason why a decision cannot be rendered on that basis at the start of the proceedings as opposed to having to wait until the completion of a full hearing on all issues.

Disposition

54. Based on all of the above, I find that in order to uphold these grievances the Board would be required to grant retroactive remedies, based on the retroactive application of the *Heath Services* decision, neither of which would be appropriate in the particular circumstances of these referrals. As such, it is appropriate to uphold the AG preliminary motion and I hereby dismiss all three of these matters.

1779-08-R; 2928-08-R United Brotherhood of Carpenters and Joiners of America, Local 397, Applicant v. **Zanette & Almeida Plastering Company Limited and Quinte Drywall Ltd.**, Responding Parties; International Union of Painters and Allied Trades, Local 1891, Applicant v. Zanette & Almeida Plastering Company Limited, Quinte Drywall Ltd., Zanette Drywall Company Limited, Responding Parties.

Construction Industry – Delay – Related Employer – The unions' bargaining rights were derived from collective agreements signed in 1977 in respect of a business that two partners, A and Z, ran – A left the business in 1982 and operated a new one, Quinte, continuously from then until these applications – After reviewing *KNK* and *Somerville* the Board determined that too much time had elapsed for there to be any protection of bargaining rights that arguably arose in 1982 in a scenario where the employer had operated openly and consistently since that time with what is now a significant workforce – Accordingly the Board determined that it would not exercise its discretion in favour of the unions – Application dismissed

BEFORE: *Marilyn Silverman*, Vice-Chair.

APPEARANCES: *Steven G. Bosnick* and *Gary Murphy* for the United Brotherhood of Carpenters and Joiners of America, Local 397; *Graham Williamson* and *Joe O'Shea* for the International Union of Painters and Allied Trades, Local 1891; *Christopher J. Edwards* and *Manuel Almeida* for Quinte Drywall Ltd.; no one appearing for Zanette & Almeida Plastering Company Limited.

DECISION OF THE BOARD: April 17, 2012

1. These are two applications filed under sections 69 and 1(4) of the *Labour Relations Act, 1995*, S.O. 1995, c.1 as amended (the "Act") in which the applicant unions seek declarations that two entities should be treated as a single employer for the purposes of the Act. The United Brotherhood of Carpenters and Joiners of America, Local 397 ("the Carpenters") filed its application on September 9, 2008. The International Union of Painters and Allied Trades, Local 1891 ("the Painters") filed its application on December 23, 2008. The employer seeks a dismissal of the applications on the basis of delay. The parties agreed to relevant facts in order to argue that motion.

2. The relevant facts are as detailed in the Agreed Statement contained in my decision of November 13, 2009. It is useful to reproduce them here:

> 1. The Respondent, Quinte Drywall Ltd. ("Quinte") was incorporated on January 25, 1983. The business is operated out of 86 Cloverleaf Drive in Belleville, Ontario. The President of Quinte Drywall is Manuel Almeida.
>
> 2. The Respondent, Zanette & Almeida Plastering Company Ltd. ("Plastering") was incorporated March 3, 1977. For the

purposes of this preliminary matter, it is agreed between the parties that Manuel Almeida and Battista Zanette were the key persons in Plastering.

3. Both corporations operated in the industrial and commercial and residential sectors providing drywall and plastering services to clients.

4. The Respondent, Plastering was discontinued as a result of a falling out between Almeida and Zanette. Almeida decided in late 1982 that he would discontinue his business dealings with Zanette. Accordingly, he left Plastering and started Quinte shortly thereafter. Zanette continued to operate the Plastering business for roughly two years following Almeida's departure.

5. On May 2, 1977, Battista Zanette, on behalf of Plastering, signed a Collective Agreement between Plastering and the International Brotherhood of Painters and Allied Trades, Drywall Applicators, Local 1891 (the "Painters"). He similarly signed, on behalf of Plastering, a Participation Agreement on October 13, 1977 with the Painters.

6. On February 17, 1977, Battista Zanette, on behalf of Plastering, also signed a Collective Agreement between the General Contractors section of the Oshawa and District Commercial Construction Exchange, and the Lake Ontario District Counsel of United Brotherhood of Carpenters of America on behalf of its affiliated unions (the "Carpenters").

7. Quinte represents that it operated continuously since 1983 and the Applicants have no reason to dispute this. Since 2000 Quinte's operations have been sufficiently open and conspicuous to have come to the Applicant's attention. Quinte is now the leading commercial and residential drywall company in the Quinte region. The Quinte region has a population of approximately 180,000 people.

8. From 1983 to the date of the present Application filed in September, 2008, neither the Painters nor the Carpenters took any steps to enforce any of their alleged rights over Quinte which they allege is a Related Employer to Plastering on the basis that Almeida was a key man of Plastering.

9. Although the Carpenters did not take any steps to enforce any of its alleged representation rights, the Carpenters did attend at Quinte Drywall work sites periodically commencing in June 2000 and attempted to speak to Almeida about voluntarily recognizing the Union.

3. As contained in the Agreed Facts the unions rights are derived from collective agreements signed by Mr. Almeida's then partner Battista Zanette in 1977 in respect of a business called Zanette and Almeida Plastering Company Ltd. ("Plastering"). In 1982 Mr. Almeida left Plastering to establish Quinte. There is no dispute that Mr. Almeida operated Quinte continuously from 1982 until the date of these applications, 2008.

4. Further to my decision of November 13, 2009 evidence was called. It is clear that from 2003 forward, the unions were conducting some investigations of Quinte and of Mr. Almeida. They were aware that Mr. Almeida operated Quinte and that it had numerous significant and high profile projects in the region. The unions tried to speak to Mr. Almeida about voluntary recognition of his company and made some effort to organize Quinte's employees.

5. Quinte argues that the Board should not exercise its discretion under section 1(4) of the Act to make a single employer declaration in this case on the basis of delay. It says that Mr. Almeida never hid from the union and it is the largest operator in the region. It says that the unions knew Mr. Almeida was the principal of Quinte and ought to have known of his connection with Plastering.

6. Quinte has trucks with its name on it on all its sites. Ten years ago it had 5 or 6 and at the time of the hearing, it had 15 or 16. Quinte has 45 employees and works on both ICI and non ICI projects. Beginning in 1992 Quinte was working on many large projects in schools, car dealerships, the Trenton Air Force base, and a variety of other institutional projects. Quinte gave evidence that representatives of the union have been on various Quinte sites over the years.

7. The unions rely heavily on the decision in *KNK Limited*, [1991] OLRB Rep. Feb. 209, a seminal decision on the effect of delay in section 1(4) applications. That case established a number of principles including that a union should not be held to an excessively high standard of knowledge or what it ought to have known about corporate activity in assessing delay in the exercise of discretion under section 1(4) of the Act. Rather delay should be addressed in the remedy afforded to the union after a declaration issues. As was stated in paragraph 50 of that decision:

> 50. There are both practical and policy reasons why the Board must be very careful in linking the exercise of its discretion to the actual or presumed state of a union's knowledge either directly, or as an aspect of due diligence. In the first place, the union's "mind", is already an artificial construct composed, presumably, of the observations and calculations of a shifting complement of union officials, holding office throughout Ontario from time to time. A union can only "know" what its officials know, but in the real world of the construction industry, it may be entirely unrealistic to expect a union official to recognize not only the presence of a non-union company, but also its principals or corporate antecedents. "Knowing" that a "non-union" firm is in active competition with unionized companies or is bidding for work in the unionized part of the industry is NOT the same as "knowing" the facts necessary to found a related employer declaration [emphasis added in upper case text]. That is especially so

> in a case such as the present one where the unionized firm had ostensibly gone out of business and its principal had purportedly gone to manage someone else's firm. A union's resources are limited, and in any assessment of what the union "ought to have known" that must be taken into account.

8. The employer asserts that *KNK* contemplates that there are situations or specifically occasions of delay that are "tantamount to abandonment" where the union's inaction is so longstanding. It asserts that this is such a case. At paragraph 57 the Board said:

> ... Where the union's inaction is so longstanding as to be tantamount to an abandonment of its bargaining rights, the Board may well dismiss the application. However, where the balance of labour relations interests can be achieved by limiting the retrospective effect of a declaration or granting such other relief "as it may deem appropriate", the Board should consider that option, rather than dismissing the application altogether.

9. The unions say that the Board in *KNK* and decisions following such as *Murard Masonry Contractors Ltd.*, [2005] OLRB Rep. July/August 662, have remained with the principle that a union otherwise entitled to a declaration under section 1(4) should not be deprived of it because of delay when that factor should more properly be addressed in remedy.

10. The parties also made submissions on a case decided after *KNK* which has relevance, *Ian Somerville Construction Limited*, [2010] OLRB Rep. November/December 839. In *Somerville*, the Labourers sought a related employer declaration under section 1(4) of the Act for bargaining rights in the non ICI sector of the construction industry relying on a predecessor employer allegation. The Carpenters held ICI rights. The two corporate entities in that case conceded that they were related businesses under common control and direction but asserted that the union had abandoned its bargaining rights. Further the alleged successor asserted that the Board should not exercise its discretion to grant the declaration sought on the basis of extreme delay in the face of the longstanding operation of the alleged successor in the period before the application was made.

11. The Board held that there was no abandonment but refused to exercise its discretion under section 1(4) to grant the declaration on the basis of three factors: a) the extraordinary delay; b) the stable workforce of the alleged successor represented by another trade union (in the ICI sector only) and c) the inaction of the union in the face of the open operation of the alleged successor for a period of 17 years. As in this case, the Board heard and considered the detailed evidence of the projects that the employer had been engaged in over a long period when the union took no action in respect of its bargaining rights. The applicant union in *Somerville* acknowledged that it could not provide reasons why it did not assert its bargaining rights over the years and on the many projects in which *Somerville* was engaged.

12. It is important to note that in *Somerville* the union that held ICI rights had filed and obtained a related employer declaration at an earlier point in time. As here the union relied on

KNK and advanced the position that there was no prejudice to the employer should a declaration issue and that any remedy for the delay could be addressed in remedy.

13. In declining to exercise its discretion to make the declaration the Board at paragraphs 37, 40 and 41 of *Somerville* the Board noted:

> ...
>
> 37. Somerville Construction has for more than 17 years carried on business in the construction industry doing landscaping work on a number of high profile projects where members of the applicant also did work from time to time but where work coming within the scope of the applicant's collective agreements was performed by or on behalf of Somerville Construction by persons who were not its members without complaint by the applicant. The applicant acknowledged it knew or ought to have known about a number of the projects for which Somerville Construction was responsible and where work coming within the scope of its collective agreement was performed by persons who were not its members. It was unable to provide an explanation for not taking any steps for some 17 years to attempt to assert the bargaining rights it had obtained from ISCL to Somerville Construction.
>
> ...
>
> 40. The declaration the applicant seeks under section 1(4) of the Act is discretionary. An application for certification is not. The Board has indicated that in exercising its discretion under section 1(4) of the Act it does take delay into account in terms of labour relations prejudice and whether the delay occasioned by a trade union seeking relief is tantamount to an abandonment of bargaining rights.
>
> 41. It appears to me that waiting some 17 years after Somerville Construction began performing work coming within the scope of the applicant's collective agreement on many high profile public locations before seeking to have the bargaining rights it held for ISCL attach to Somerville Construction and not providing any explanation for that passage of time certainly gives rise to a finding that the delay is, in the words of the Board in *KNK Limited*, "tantamount to an abandonment of bargaining rights" or as the Board said in *E.S. Fox Limited*, "the union's inaction...amounts to abandonment of its bargaining rights." Simply put, the applicant's inaction in the face of so many high profile projects where work coming within the scope of the applicant's collective agreements was performed by persons who were not its members indicates the applicant did nothing to pursue the bargaining rights it had obtained earlier from ISCL. In *J.S. Mechanical* the Board indicated it would find a union had abandoned its bargaining rights in the following circumstances:

> > Once a union has obtained bargaining rights either through certification or voluntary recognition it is expected that it will actively promote those rights. If a union declines to pursue bargaining rights it may lose them through disuse.
>
> The applicant's failure to act for some 17 years in these circumstances is, in my view, what the Board in KNK Limited and E.S. Fox Limited had in mind when it suggested that delay in seeking a single employer declaration may be a reason to refuse to make that declaration.
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> . . .

14. In addressing *Somerville* the Painters note that case represents the first time the Board has addressed the meaning of "tantamount to abandonment", the phrase found in the reasons of *KNK*. The Painters rely on the well established principles from *KNK* that delay itself will not defeat an application under section 1(4) and that the focus is rather on actual prejudice. The Painters say that the factors that led the Board to rely on that concept in *Somerville* are not found in the instant case. In distinguishing *Somerville* the Painters say that the union had actual knowledge of the relationship because a Board finding had already been made in relation to another trade union and its application under section 1(4) of the Act. Second, the Board in *Somerville* pointed to actual prejudice which is also not present in its case.

15. The Painters assert that reliance on the union's conduct in assessing the impact of delay in Section 1(4) has been rejected since the *KNK* analysis. The Painters say that *Somerville* does not stand for the proposition that the Board should conduct an inquiry into what work the responding party performed before the application was brought as to do so would undermine the well established principles set out in *KNK*. It relies on paragraphs 52 and 53 of *KNK*:

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> 52. How does the employer establish what the union "knew" or "ought to have known" where, as here, there was no express representation FROM the union, and no notice TO THE IBEW, that KNK was to be or had become Mr. Harvey's non-union successor to Agincourt [emphasis added in upper case text]? How does careful counsel establish "constructive knowledge"? By demonstrating circumstances from which the Board could reasonably infer that the trade union knew, "must" have known or "should" have known and acted upon, the facts upon which a section 1(4) application could be based. That is why we heard testimony about the size and prominence of the company's signs, where its trucks are parked, KNK's proximity to Buster's bar, the drinking habits of electricians, whether union officials were likely to be there, whether there was a KNK business card posted near the telephone which officials might have seen and connected to Mr. Harvey, Mr. Harvey's table talk, how often he was on a job site and in what apparent capacity, the number of union business agents available to do detective work, and so on. This focus on the union's behaviour leads inevitably to uncertainty and more protracted litigation, and shifts the focus from the purpose of section

> 1(4), the prejudice to a related employer if a declaration is granted, and how that prejudice is related, if at all, to conduct of that union. It is also difficult to harmonize with section 1(5) of the Act.
>
> 53. Section 1(5) was added to the regulatory scheme in 1975, and reflects a legislative presumption that a trade union will not know much about the internal arrangements of a business, despite the various means available to it, including the filings required by certain statutes regulating commercial activities. Any purported limitation on access to 1(4) relief based on the union's "due diligence" or knowledge, must take into account this legislative development. We fail to see how the Board in the exercise of its discretion can dismiss an application because it concludes that the union "should have known" or found out what the Legislature has quite clearly indicated a trade union will not be expected to know. And, again, those questions shift the focus from the purpose of section 1(4) and the prejudice to the employer if a declaration is made.

16. The Painters suggest that *Somerville* did not rely on the performance of jobs by the responding party in its analysis but rather on the union applicant's actual knowledge of another related employer application and the Board's findings made in that application. Further the Painters suggest that the work in *Somerville* was only relevant in the context of the union in that case knowing about the relationship from the earlier application. Another feature of *Somerville,* absent in this case, is the actual prejudice occasioned by potentially overlapping work jurisdictions given that another trade union held bargaining rights in the ICI sector in that case. Here the two unions are both requesting declarations with no suggestion of claims that would potentially overlap.

17. The Painters reiterate that the conduct of the union is irrelevant to a section 1(4) declaration. That, in any event, there is no evidence to suggest actual knowledge and no evidence of prejudice to the employer. The Painters ask the Board to clarify its November 2009 decision and the statements in *Somerville* so as not to suggest a return to the pre-*KNK* analysis on the relevance of union conduct.

18. The Carpenters adopt the Painters' submissions. Further they say the approach in Somerville is not a shift in the Board's focus away from the *KNK* principles, but rather an application to a specific fact situation. The Carpenters reiterate that the section 1(4) declaration should be made unless there are particularly compelling policy reasons or actual prejudice. The knowledge a union must possess, as articulated in *KNK,* is actual knowledge of the corporate relationship, which in *Somerville* was evidenced by a Board determination under section 1(4) for another union. The presumption is that the trade union will not know of the corporate relationship. The Carpenters say that knowledge must be in reference to the statutory preconditions: two or more entities, common control and direction and related activities or businesses. It asserts that there must be actual knowledge and actual prejudice to lead the Board to not exercise its discretion in the union's favour. As this analysis relates to the *Somerville* decision, the Carpenters say that another union had obtained the information and the Board had issued a decision in relation to that other union and the related status of the employers. That amounted to actual knowledge. In the present case the Carpenters say that there is rebutting of

the presumption and no actual knowledge in the eight year period from 2000 to the filing of the application. The union knew that Quinte existed but did not know the essential feature of common control and direction. The Carpenters too highlight the potential competing jurisdictional claims as a significant feature of *Somerville* and one that distinguishes it from the instant case.

19. In summary the two unions ask that I conclude that Quinte has not rebutted the presumption against actual knowledge by the unions and has not shown actual prejudice. Therefore, the Board should not refuse to exercise its discretion.

20. The employer says that this case is informed by both knowledge and acquiescence on the part of the unions over a long period of time. Both unions knew of the principal of Quinte, Manny Almeida, and of his company. Mr. Almeida left the Zanette business and it continued to operate for two years. The employer says that the *Somerville* case is directly on point. The delay in this case exceeds that in *Somerville*, as here Quinte has been in operation for 25 years. Quinte contends that the union had all the information it needed at all times and particularly in the years from 2000 to 2008 to disclose the association between Mr. Almeida and Quinte, given the size and scope of Quinte's operations and the area it served.

21. The employer submits that the appropriate measure of delay is from the period when the applicants knew or ought to have known of the existence of Quinte and Mr. Almeida's role; a period going back to 1982. The employer highlights that although there was no evidence as to what Quinte did in that first period (1982 to 2000) there is no dispute that it was operational and always under the control of Mr. Almeida. The employer says that as in *Somerville* there is no explanation for the union's delay in bringing this application. The employer relies on the following from *Burling Ranger Co.* [2007] OLRB Rep. January/February 8:

> 40. While the Board agrees that a trade union is not expected to be aware of every instance in which a unionized contractor performs bargaining unit work, the evidence in the present case suggests that, to the extent that the union was not aware of Burling's on-going construction activities in the County of Simcoe in the period prior to provincial bargaining in 1978, the reason for that was the union's decision to police its collective agreements in that geographic area only at work sites where the general contractor was unionized... While this decision is perhaps understandable given the relatively few jobs in that geographic jurisdiction and the union's lack of resources at the time, **the union must nonetheless accept the consequences of its decision to direct its resources elsewhere**" [Emphasis added]

22. Quinte suggests that the fact that it made no effort to hide brings this case within the principles of the analysis in *Somerville*. Quinte suggests that the applicants were not looking for the connection between the alleged successor and the alleged predecessor. In *Somerville* the knowledge or constructive knowledge of the union weighed against the union in the exercise of discretion.

23. In addressing prejudice, the employer also draws from the analysis in *Somerville* and asserts that, although there are no existing collective agreement rights at play in this case, the Board should be concerned that a declaration made in favour of the two applicants here would mean two ICI collective agreements representing one trade jurisdiction in one sector. The Labourers say there is a factual dispute about the bargaining rights at issue in this case. I need not describe this issue in further detail as I conclude that the prejudice analysis on this point favours the unions.

24. Both trade unions respond to the employer. They assert that the Board should not return to the pre-*KNK* "constructive knowledge" standard and specifically assert that there are three factual assertions that have not been the subject of evidence: one the activity of Plastering after the signing of the voluntary recognition agreement, two the extent of Quinte's ICI projects before 1997, and three visits by the union to the Quinte sites other than those in the notes of union representatives that were produced before me. Finally the Carpenters say that *Burling Ranger* was a case of actual abandonment of pre provincial bargaining ICI rights and therefore fully distinguishable.

25. In addition the Painters say that they did not learn of the relationship between the companies until after the Carpenters' application.

Decision

26. Section 1(4) of the Act reads as follows:

> **1.** (4) Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

27. This determination assumes that the three preconditions in section 1(4) are met and is directed only to whether in the described circumstances I would refuse to exercise my discretion on the basis of the delay. The context of this case is unique and some key considerations should be highlighted. Section 1(4) is discretionary aimed at the preservation of bargaining rights. Section 1(4) is not based on fault. The development of the jurisprudence from *KNK* has given a different complexion to the notion of delay.

28. Quinte had been operating for 25 years at the time the application was filed. It had been over 33 years since the unions signed onto collective agreements with the alleged predecessor company. Mr. Almeida's then partner, Mr. Zanette, signed the agreements. The two men then parted company three years later. Plastering continued in operation when Mr. Almeida

began and operated Quinte. Mr. Zanette incorporated another company, ran that for twenty years and was ultimately certified by the Carpenters shortly before this proceeding began.

29. Although Quinte became a more significant player in the region in 2000, it is uncontested that there was no period of dormancy of the company. *Somerville* provides a sound examination of what the Board meant in *KNK* about delay that is so longstanding as to be tantamount to abandonment. The unions assert that the decision in *Somerville* was significantly informed because of bargaining rights held by an intervening union and the fact that those were obtained by a related employer application which application was or should have been known by the applicant in that case. Although I agree that was a feature of *Somerville*, and certainly one of the factors in the Board's decision not to exercise its discretion to make the declaration sought, the Board in that case did not rely solely on that fact. Paragraph 45 of the case summarizes the variety of reasons why the declaratory relief was rejected:

> 45. Having regard to the amount of time that elapsed before the applicant sought to claim it held bargaining rights in respect of Somerville Construction, its inability to provide any explanation for allowing that much time to pass by when Somerville Construction was working on a number of public projects using persons who were not members of the applicant to carry out work coming within the scope of the applicant's collective agreements when it knew or ought to have known about such work, and the labour relations prejudice that would result in light of the intervenor holding bargaining rights for Somerville Construction's carpenters working in the industrial, commercial and institutional sector if the Board granted the declaration the applicant seeks, the Board is not prepared to exercise its discretion under section 1(4) of the Act and declare the applicant holds bargaining rights for the construction labourers employed by Somerville Construction.

30. In dealing with the other decisions referred to me, *KNK* and *Murard*, it is useful to compare the relevant time periods at issue. In *KNK* the old entity ceased operating in 1985 and the new entity began later that same year. The section 1(4) application was filed five years later in 1990. On the facts of that case there were discussions and some suspicion by the union as to the company's sporadic activity in 1987, 1988 and 1989. However when the new entity began to perform work in another location in the summer/fall of 1990 the union filed its application. That was 7-9 months after the union identified the job in the new location giving rise to the application. Similarly in *Murard* there was no suggestion that the applicants knew or ought to have known about the new operation in the 13-year period from its inception until the section 1(4) application was filed.

31. This is an unusual case. Quinte has been operating with Mr. Almeida as its principal since 1982; a very long time. It has established a successful business in the Quinte area. Plastering bore Mr. Almeida's name but that name was always fully associated with Quinte. I believe these facts fall within the *Somerville* analysis.

32. For clarity, these facts do not disclose what the Board would require to find abandonment in the industrial commercial and institutional sector of the construction industry

and that is not the finding I make; see *J & D Display & Interiors Ltd.* [1998] OLRB Rep. March/April 217; *G.S. Wark Limited* [1996] OLRB Rep. September/October 811; *Enka Contracting Ltd.* [2004] OLRB Rep. September/October 926 and *C.S.B.I. Contracting Ltd.*, [2000] O.L.R.D. No. 98. However, *KNK* did not require abandonment. If bargaining rights had been abandoned there would be no need to deal with the Board's discretion at all. The Board was concerned with a situation that was "tantamount" to abandonment.

33. In exercising its section 1(4) discretion the Board must assess the particular facts of each case and the labour relations purpose in its exercise of that discretion. Section 1(4) operates to prevent an erosion of bargaining rights when a corporate vehicle changes hands or names and the essence of the business (where the bargaining rights attached) remains. Can it be said in this case where 25 years have elapsed since Mr. Almeida set up his competing business with the alleged predecessor that I should exercise my discretion to protect bargaining rights that arguably flowed from Plastering to Quinte in 1982? I do not think so. In my view too much time has elapsed for there to be any protection of bargaining rights that arguably arose in 1982 in a scenario where the employer has operated openly and consistently since that time with what is now a significant workforce. The passage of this much time combined with the constant and open manner in which Quinte has operated particularly since 2000 and the fact that Mr. Almeida was always associated with the Plastering business and then with the Quinte business, lead me to conclude that I would not exercise my discretion in favour of the unions.

34. Given this determination it would appear as though these applications should be dismissed. In the event the applicants see any reason for that not to occur they are to provide detailed submissions by May 15, 2012 and I will consider how next to proceed. The responding party need not respond to those submissions unless directed to do so by the Board. In the event no submissions are received these applications will be deemed terminated on the date of this decision.

COURT PROCEEDINGS

0598-10-ES (Court File No. 328/11) Sanford Pensler, a Director of Korex Don Valley ULC – and – Ted Adams, et al, Communications, Energy and Paperworkers Union of Canada, Local 132, Ontario (Ministry of Labour – Director of Employment Standards) and OLRB

Employment Standards – Judicial Review – Remedies – Judicial review of Board decision ([2011] OLRB Rep. May/June 389) finding that criteria to exempt directors from liability for employee wages under s. 80(4) of the *Employment Standards Act, 2000* was to be read conjunctively and not disjunctively – The applicant was a director of a Nova Scotia corporation that carried on business in Ontario and had employees in Ontario – When the corporation went bankrupt, an Employment Standards Officer issued an Order to pay against the applicant director, as the corporation had no assets for distribution – On review the Board held that in light of the Act's remedial objectives, s. 80(4) must be read conjunctively in order to prevent employers from circumventing the Act by incorporating outside Ontario – The applicant argued this conclusion was contrary to courts' prior application of s. 80(4), which it submitted was binding on the Board – The Divisional Court

held the standard of review was reasonableness in light of the Board's expertise under its home statute and without considering the effect of the prior court decisions, the Divisional Court found the Board's decision to be reasonable – With respect to the impact of the prior court decisions, the Divisional Court held that because the aspect of those decisions involving s. 80(4) was neither thorough nor focused on the issue of conjunctive versus disjunctive interpretation, the fact that the Board declined to follow those court decisions did not make what was a reasonable decision, otherwise unreasonable – This conclusion was bolstered by the Board's expertise interpreting its home statute – Judicial review dismissed

Superior Court of Justice (Divisional Court), *Whalen, Sachs* and *Herman JJ.*, April 17, 2012

WHALEN J. (ORALLY)

[1] This is an application for judicial review of the Decision of the Ontario Labour Relations Board ("the Board") dated June 2, 2011, and in particular seeking to set aside that Decision and the underlying Order to Pay No. 39444 issued by an Employment Standards Officer under the *Employment Standards Act, 2000* ("the Act").

[2] The facts were agreed to. Briefly put, the applicant was at the relevant times a director of a Nova Scotia Corporation, carrying on business in Ontario and with employees in Ontario. When the corporation went bankrupt, the employees (who are some of the Respondents here) sought and obtained the Order to Pay against the applicant Director because the corporation had no assets for distribution to unsecured creditors, including its Ontario employees. The Order to Pay was in respect of a variety of types of wages owed by the corporation to those employees.

[3] The narrow legal question is whether the applicant is exempt from the Order to Pay because the corporation was incorporated under the laws of a province other than Ontario. The parties agree that she would be if s.80(4) of the Act is read disjunctively, which is the applicant's position, while if read conjunctively, she would be liable as urged by the respondents. In lengthy written Reasons, the Board concluded that the subsection should be read conjunctively, so that each of the three factors listed in it were satisfied before a director would be exempt. Read this way, the exemption applied to not- for- profit corporations incorporated outside Ontario.

[4] The crux of the legal dispute centred on the effect of the decisions of the Superior Court of Ontario and Ontario Court of Appeal respectively in Stoody v. Westsun Show Systems Inc., [2003] O.J. No. 4542 and Stoody v. Kennedy, [2005] O.J. No. 1049. The Court of Appeal decision dealt with an appeal and cross appeal from the Superior Court trial decision.

[5] There is no disagreement that generally reasonableness would be the appropriate standard of review for a specialized expert tribunal such as the Board, which is also protected by a strong privative clause, and is entrusted with the interpretation and application of its home statute. This has been well established in prior jurisprudence, which is one of the measures of the standard of review to be followed, for example see: Dunsmuir v. New Brunswick, [2008] S.C.J. No. 9 (SCC); Canadian General Tower Ltd. v. United Steel Workers, Local 862, [2008]

O.J. No. 1989 and; Nor-Man Regional Health Authority Inc. v. Manitoba Association of Health Care Professionals, [2011] S.C.J. No. 59 (SCC).

[6] With respect to the interpretation of the Act, it is critical to note that s.119(4) of the Act specifically directs the courts not to overturn a decision of the Board on judicial review unless the decision is unreasonable. Furthermore, in Abdoulrab v. Ontario (Labour Relations Board), [2009] O.J. No. 2524 at paras. 46-47, the Ontario Court of Appeal assigned the primary role of interpreting the Act to the Board, and observed that:

> "The legislature has mandated that the courts not overturn a decision of the OLRB concerning the interpretation of the ESA unless it is unreasonable."

[7] It is beyond dispute that the Board is a specialized tribunal with responsibility for matters under various labour and employment related statutes in Ontario. The Board members have specialized experience, knowledge and training in labour relations and employment matters. The Board is responsible for the ongoing interpretation of labour and employment legislation and the development of precedent within its jurisdiction.

[8] There is no dispute either that the Act provides a comprehensive and expeditious scheme for the establishment and enforcement of minimum standards of employment for the protection of employees in Ontario.

[9] Fundamentally, the nature of the question before the Board involved the interpretation of the provision of one its home statutes. Based on the law and principles just stated, we conclude that the appropriate standard of review to apply to its decision is reasonableness.

[10] Without yet considering the effect of the Stoody decisions, we conclude that the Board's decision was reasonable. It was comprehensive and considered all of the positions of the parties in a clear, rational and transparent manner. Its conclusions were logical and based in reason after a full discussion of the competing positions when measured against the purpose of the Act, its scheme and structure, and when considered in view of the applicable law and precedent. Although it is not our role to decide the issues, we found the Board's reasoning to be compelling, logical and sound. The Board reviewed the competing rules of interpretation urged upon it and applied the most important in a reasonable manner. For example, it observed that the Act was remedial in nature and as such should be accorded a broad and generous interpretation in its application. The other side of that same coin was that limitations in the Act should be given narrower interpretation in order to achieve the statute's remedial objective. With respect to the interpretation of the word "and" at the end of s.80(4)(b), the Board considered but rejected the applicant's submission that upon authority of Sullivan on Construction of Statutes, "and" should be read jointly and severally in which case the provision would be read disjunctively. Reviewing that authority, the Board concluded that there was a rebuttable presumption that the word "and" be read jointly and severally. That presumption was rebutted in this case by virtue of the over-arching purpose of the Act to protect Ontario employees and to provide them with some limited remedy. A joint and several reading of the word "and" in s.80(4) would render parts of the statute redundant, as identified by the Board. It could also lead to anomalies and mischief

whereby corporations could shield themselves from the Act by incorporating outside of Ontario. These conclusions are reasonable.

[11] What then is the effect of the Stoody decisions, which without doubt made pronouncements on the interpretation of s.80(4) of the Act. Are they binding upon the Tribunal, especially the decision of the Ontario Court of Appeal? The applicant argued strongly that they were binding. Indeed, this was at the heart of the applicant's case. The Board considered the Stoody decisions and decided not to follow them and gave reasons for deciding that way. Does this make what was otherwise a reasonable decision unreasonable?

[12] We find that it does not for a variety of reasons. Firstly, the pronouncement of these two courts were very brief, essentially one paragraph in each decision which consisted of more than 60 paragraphs in each case. The issue of s.80(4) of the Act was a minor aspect of the central issues under consideration by each court. Neither court engaged in discussion on the interpretation of s.80(4) and it is not at all apparent that the question of disjunctive or conjunctive reading of the provision was in the mind of the Court at all. The thrust of the trial court's three sentence comment seemed to be in recognition of the court's lack of jurisdiction to grant a remedy under the Act. The trial court pointed out that the proper avenue for that remedy was through an Employment Standards Officer. By contrast, the Court of Appeal specifically declined comment on the jurisdictional issue. It upheld the trial court's interpretation and decision on the application of s.80(4) and neither court discussed how it reached its conclusions in this regard. Both decisions are conclusory without fulsome discussion or transparency as to the arguments placed before them, if any. As precedents, they do not give much guidance. Secondly, there is considerable authority that courts have a limited supervisory role in reviewing the decisions of administrative tribunals, in particular with respect to the interpretation of a tribunal's home statute.

[13] As already discussed, the Abdoulrab case has made it clear that the primary responsibility for the interpretation of the Act rests with the Board, not with the courts. We also note that the Stoody decisions were based on civil claims outside the employment standards and labour regulatory systems.

[14] It was not a situation of hierarchical review originating from a tribunal's decision. Indeed, the trial court questioned its jurisdiction under the Act. Primary responsibility for interpretation of the Act rests with the Board and its decisions in that regard must be reasonable. We have concluded that the Board's decision in this case was reasonable and for all these reasons the application is dismissed.

SACHS J.

[15] I have endorsed the Record, "For reasons delivered orally by Whalen J., this application is dismissed. As agreed between the parties, the applicant is to pay the employee respondents their costs fixed in the amount of $7,500.00, all inclusive."

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING FEBRUARY 2012

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1130-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bamco Custom Woodworking Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Bamco Custom Woodworking Inc., in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2607-11-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Ideal Railings Ltd. (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices, iron workers, iron workers apprentices in the employ of the responding party in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the County of Simcoe and the District Municipality of Muskoka, save and except the industrial commercial and institutional sector, and save and except non-working foremen and persons above the rank of non-working foreman" (13 employees in unit)

3334-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1708806 Ontario Inc. o/a Advanced Weather Enclosures, 1817804 Ontario Inc. o/a Advanced Weather Enclosures Group (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 1708806 Ontario Inc. o/a Advanced Weather Enclosures and 1817804 Ontario Inc. o/a Advanced Weather Enclosures Group in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of 1708806 Ontario Inc. o/a Advanced Weather Enclosures and 1817804 Ontario Inc. o/a Advanced Weather Enclosures Group in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3402-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. All Elements Protection (Respondent)

Unit: "all construction labourers in the employ of All Elements Protection in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

3416-11-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (Applicant) v. Strong Foundation Inc. (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervener)

Unit: "all carpenters and carpenters' apprentices in the employ of Strong Foundation Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3417-11-R: International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1752292 Ontario Inc. o/a TA General Contracting (Respondent)

Unit: "all painters and painters' apprentices in the employ of 1752292 Ontario Inc. o/a TA General Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of 1752292 Ontario Inc. o/a TA General Contracting in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3474-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Power Roofing (Respondent)

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of Power Roofing in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

3525-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Tri-City Construction Ltd. (Respondent)

Unit: "all construction labourers in the employ of Tri-City Construction Ltd. in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3553-11-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Drain-Tite Industries Inc. (Respondent)

Unit: "all construction labourers in the employ of Drain-Tite Industries Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (24 employees in unit)

3560-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Mike Letarte c.o.b. as MGL Contracting (Respondent)

Unit: "of all carpenters and carpenters' apprentices in the employ of Mike Letarte c.o.b. as MGL Contracting in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

3591-11-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ava Electric Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Ava Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Ava Electric Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

3608-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Brandy Lane Homes and Mountain Trails Development Corporation (Respondent)

Unit: "all construction labourers in the employ of Brandy Lane Homes and Mountain Trails Development Corporation in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

3653-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Regional Trenching Inc. (Respondent)

Unit: "all construction labourers in the employ of Regional Trenching Inc. in all sectors of the construction industry in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3657-11-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Vercon Contracting Ltd. (Respondent)

Unit: "all painters and painters¿ apprentices in the employ of Vercon Contracting Ltd in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non working foreman all painters and painters¿ apprentices in the employ of Vercon Contracting Ltd in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3056-11-R: Ontario Workers' Union (Applicant) v. St. Michael's Hospital (Respondent)

Unit: "all employees of St. Michael's Hospital employed as medical laboratory technicians, medical laboratory technologists, and medical laboratory assistants in the City of Toronto, save and except operations leaders, persons above the rank of operations leader, clerical staff, students and persons in bargaining units for which any trade union held bargaining rights as of December 14, 2011" (134 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	199
Number of persons who cast ballots	181
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	132
Number of segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names do not appear on voters' list	30
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	103
Number of ballots marked against applicant	75
Number of ballots segregated and not counted	2

3168-11-R: Healthcare, Office and Professional Employees Union, Local 2220, UBCJA (Applicant) v. Woodgreen Community Services (Respondent) v. Universal Workers Union, Labourers International Union of North America, Local 183, Workers United Canada Council (Intervener)

Unit: "all employees of Woodgreen Community Services in the City of Toronto save and except supervisors, persons above the rank of supervisor, office, clerical and paramedical employees, program coordinators, program assistants, program workers and drivers." (80 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	75
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	48
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked in favour of intervener	19
Number of ballots segregated and not counted	0

3184-11-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the Internation Brotherhood of Teamsters (Applicant) v. Gate Gourmet Canada Inc. (Respondent) v. National Organized Workers (Intervener)

Unit: "all employees of Cara Operations Limited (now Gate Gourmet Canada Inc.) in its Airport Services Division Flight Kitchen #1, Flight Kitchen #2, Retail Operating, and Trucking and Commissary at Lester B. Pearson International Airport, in the City of Mississauga, save and except supervisors, persons above the rank of supervisor and office staff" (975 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	947
Number of persons who cast ballots	485

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	478
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	4
Number of ballots segregated and not counted	3

3247-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Houselink Community Homes (Respondent)

Unit: "all employees of Houselink Community Homes in the City of Toronto save and except Managers and persons above the rank of Manager and employees holding the position of senior accounting staff and Executive Office Coordinator" (66 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	68
Number of persons who cast ballots	61
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	42
Number of segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	19

3288-11-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Biox Canada Limited (Respondent)

Unit: "all employees of the Biox Canada Limited employed in the City of Hamilton, save and except Coordinators, Supervisors and those above the rank of Coordinator, Supervisor, engineers, engineers-in-training and office and clerical employees" (18 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

3329-11-R: International Brotherhood of Electrical Workers, Local 636 (Applicant) v. The Corporation of the Town of Midland (Respondent) v. Ontario Public Service Employees Union (Intervener)

Unit: "all office, clerical and technical employees of the Corporation of the Town of Midland in the Town of Midland, save and except supervisors persons above the rank of supervisor, students employed during the school vacation period, students engaged in a co-operative education placement or internship program, and persons covered by subsisting collective agreements" (26 employees in unit) *(Having regard to the agreement of the parties.) (Clarity Note)*

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

3378-11-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. SGS Canada Inc. (Respondent)

Unit: "all employees of SGS Canada Inc. in the County of Oxford save and except supervisors, those above the rank of supervisors, office, clerical, technical and sales workers." (3 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3396-11-R: United Food & Commercial Workers, Local 206 (Applicant) v. Tok Transit Limited (Respondent) v. Amalgamated Transit Union, Local 113 (Intervener)

Unit: "All transit operators employed by Tok Transit Limited under contract with the Region of York, Ontario, save and except inspectors, supervisors, and persons above the rank of supervisor." (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3407-11-R: Ontario Private Security Workers' Alliance (Applicant) v. INKAS Security Services Ltd. (Respondent)

Unit: "all employees of INKAS Security Services Ltd. employed in the City of Oakville, save and except office, clerical and sales staff, students working during school vacation periods, supervisors and those above the rank of supervisor" (3 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3426-11-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Town of Englehart (Respondent)

Unit: "all Public works and custodial employees employed by the Corporation of the Town of Englehart, Englehart, Ontario, save and except, Superintendents, persons above the rank of Superintendent, Coordinators and Students." (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	6

3428-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Amber Lea Place Limited (Respondent) v. Grand River Valley Health Care Employees' Union Local 305, CLAC (Intervener)

Unit: "all employees of Amber Lea Place Limited in the City of Brantford, save and except supervisors, persons above the rank of supervisor, persons regularly employed for more than twenty-four (24) hours per week and students employed during the school vacation period; all employees of Amber Lea Place Limited in the City of Brantford regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period, save and except supervisors, and persons above the rank of supervisor." (19 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters'	0

list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked in favour of intervener	2
Number of ballots segregated and not counted	0

3454-11-R: Ontario Nurses' Association (Applicant) v. St. Elizabeth Health Service (Respondent)

Unit: "all Registered Nurses and Registered Practical Nurses and all Registered Nurses and Registered Practical Nurses with a Temporary Certificate of Registration with the College of Nurses of Ontario engaged in a nursing capacity at St. Elizabeth's Thunder Bay Service Delivery Centre in Thunder Bay, Ontario, save and except for, supervisors and persons above the rank of supervisor, home/personal support staff and office/clerical staff" (22 employees in unit)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	2

3465-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Cando Rail Services Ltd. (Respondent)

Unit: "all employees, including team leaders, employed by Cando Rail Services Ltd. in the railway switching operations at the Vaughan Intermodal Terminal located at 6830 Rutherford Road, in Kleinburg, Ontario, save and except supervisors and those above the rank of supervisor." (23 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3499-11-R: Association of Management, Administrative and Professional Crown Employees of Ontario (Applicant) v. Ontario Arts Council (Respondent)

Unit: "all employees of the Ontario Arts Council in the Province of Ontario, save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations." (48 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	4

3513-11-R: Canadian Union of Public Employees (Applicant) v. Supportive Housing in Peel (SHIP) (Respondent)

Unit: "all employees known as tenant relations and maintenance, in Supportive Housing In Peel (SHIP), in the Region of Peel, save and except for managers, those above the rank of managers, and those currently covered by an existing trade union." (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3544-11-R: Canadian National Federation of Independent Unions (Applicant) v. Providence Care Centre (Respondent)

Unit: "all employees of Providence Care Centre employed with attendant care outreach and endymion programs in the City of Kingston, save and except supervisors, those above the rank of supervisor, office and clerical." (53 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	53
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

3554-11-R: Teamsters Local Union No. 879 (Applicant) v. HM Cash Incorporated (Respondent)

Unit: "all Armed Guards employed by HM Cash Incorporated in the Province of Ontario, save and except supervisors and those above the rank of supervisor" (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

3559-11-R: Canadian Union of Public Employees (Applicant) v. Rainy River District School Board (Respondent)

Unit: "all Early Childhood Educators employed by the Rainy River District School Board in the District of Rainy River, save and except supervisors and persons above the rank of supervisor and employees already represented by a Trade Union" (5 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3565-11-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Compass Group Canada Ltd. (Respondent)

Unit: "All employees of Compass Group Canada Ltd., engaged in retail Food Services at Kingston General Hospital in the City of Kingston, Ontario, save and except Supervisors, persons above the rank of Supervisor, Office and Sales Staff." (38 employees in unit)

Number of names of persons on revised voters' list	34
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2

Number of ballots segregated and not counted	0

3571-11-R: Ontario Nurses' Association (Applicant) v. Saint Luke's Place (Respondent)

Unit #1: "all registered nurses and nurses with a temporary certificate of registration engaged in a nursing capacity at Saint Luke's Place in the City of Cambridge, save and except Education Coordinator, Infection Control Coordinator, Assistant Director of Care and persons above the rank of Assistant Director of Care" (11 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

3572-11-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Cusco Fabricators Inc. (Respondent)

Unit: "all employees of Cusco Fabricators Inc. in the Regional Municipality of York, save and except supervisors, persons above the rank of supervisor, engineers, draftspersons, quality control, office, clerical and sales staff." (48 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	50
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	49
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	0

3574-11-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Ideal Railings Ltd. (Respondent)

Unit: "all employees of Ideal Railings Ltd. in the in Regional Municipality of Peel, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff." (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	2

3601-11-R: Ontario Nurses' Association (Applicant) v. Specialty Care Case Manor (Respondent)

Unit: "all Registered Practical Nurses and Registered Practical Nurses with a Temporary Certificate of Registration engaged in a nursing capacity at Specialty Care Case Manor Long Term Care Centre, in the Town of Bobcaygeon, Ontario, save and except Associate/Assistant Director of Care and those above the rank of Associate/Assistant Director of Care, and RAI Manager" (15 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

3501-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. B.W.K. Construction Company Limited (Respondent)

1952-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Laird Constructors Inc. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

1958-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. District School Board of Niagara (Respondent) v. Canadian Union of Public Employees (Intervener)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning Program at District School Board of Niagara as defined in the Education Act, save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union." (23 employees in unit)

2313-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Link-Line Contractors Ltd. (Respondent) v. Labourers' International Union of North America, International Union of Operating Engineers, Local 793 (Intervener)

Unit: "all Pipeline Inspectors or Joint Trench Supervisors employed by the Responding Party at and out of Mississauga, Ontario, save and except Quality Control or Quality Assurance Inspectors, Supervisors and persons above the rank of Supervisors, sales, office and clerical employees and persons covered by subsisting collective agreements" (4 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

0660-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 979092 Ontario Inc. c.o.b. as Jacs Masonry (Respondent)

Unit: "all construction labourers in the employ of the responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of the responding party in all other sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

2424-11-R: Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Best Blasting Mats Inc. (Respondent)

Unit: "all employees of Best Blasting Mats Inc. in the Province of Ontario, save and except assistant managers, persons above the rank of assistant manager, office, clerical and sales staff" (11 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	3

3201-11-R: National Organized Workers (Applicant) v. Gate Gourmet Canada Inc. (Respondent) v. Teamsters Local Union 647 (Intervener)

Unit: "all employees of Cara Operations Limited (now Gate Gourmet Canada Inc.) in its Airport Services Division Flight Kitchen #1, Flight Kitchen #2, Retail Operating, and Trucking and Commissary at Lester B. Pearson International Airport, in the City of Mississauga, save and except supervisors, persons above the rank of supervisor and office staff." (1064 employees in unit)

3331-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. A.P. Plasman Inc. (Respondent)

Unit: "all employees of A.P. Plasman Inc. - Windsor Plant I, located at 5250 Outer Drive in the Town of Tecumseh, save and except supervisors, persons above the rank of supervisor, office and sales staff." (214 employees in unit)

Number of names of persons on revised voters' list	216
Number of persons who cast ballots	202
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	193
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	69
Number of ballots marked against applicant	124
Number of ballots segregated and not counted	9

3387-11-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Safety-Kleen Canada Inc. (Respondent)

Unit: "all employees of Safety-Kleen Canada Inc. (Oil Recovery Division), employed at 300 Woolwich Street South, Breslau, Ontario save and except supervisors, persons above the rank of supervisor, Facility Engineers and office and clerical employees" (46 employees in unit)

Number of names of persons on revised voters' list	93
Number of persons who cast ballots	89
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names appear on voter's list	43
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	28
Number of ballots segregated and not counted	43

3613-11-R: International Association of Machinists and Aerospace Workers (Applicant) v. Arclin Canada Limited (Respondent)

Unit: "all employees of Arclin Canada Limited, in the City of North Bay, save and except supervisors, those above the rank of supervisor, office and clerical staff." (33 employees in unit)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	32

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	0

Applications for Certification Withdrawn

2143-11-R: Ontario Public Service Employees Union (Applicant) v. St. Leonard's Community Services London & Region (Respondent)

2565-11-R: Canadian Construction Workers Union (Applicant) v. 1148044 Ontario Ltd. c.o.b. as Cambria Design Build (Respondent)

3449-11-R: Universal Workers' Union, Labourers' International Union of North America, Local 183 (Applicant) v. Expercom Telecommunications Inc. (Respondent) v. Port Perry Employees Association (Intervener)

3482-11-R: International Union of Operating Engineers, Local 793 (Applicant) v. Expercom Telecommunications Inc. (Respondent) v. Port Perry Employees Association (Intervener)

3612-11-R: Canadian Union of Public Employees (Applicant) v. St. Joseph's Villa (Respondent)

FIRST AGREEMENT - DIRECTION

3291-11-FC: Labourers' International Union of North America, Local 837 (Applicant) v. MCL Concrete Ltd. (Respondent) *(Granted)*

3310-11-FC: Retail, Wholesale & Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Township of Killaloe, Hagarty and Richards (Respondent) *(Granted)*

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1305-09-R: Teamsters Local Union No. 419 (Applicant) v. Morris Brown & Sons Company Limited, Provincial Fruit Company Limited and, Rite Pak Produce Co. Limited (Respondent) v. UFCW Canada, Local 1993 (Intervener) *(Dismissed)*

0513-10-R: CUPE Local 1974 (Applicant) v. Kingston General Hospital and, Shared Support Services Southeastern Ontario (Respondent) *(Withdrawn)*

0854-10-R: International Union of Painters and Allied Trades Local 1891 (Applicant) v. Alliance Environmental and Abatement Contractors Inc. and, 930340 Ontario Inc. c.o.b. as B&B Abatement and Insulation (Respondent) *(Granted)*

1201-10-R: Labourers' International Union of North America, Local 493 (Applicant) v. Kona Builders Limited, Capital Construction (2007) Inc. (Respondent) *(Withdrawn)*

2384-10-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Redirack Limited and The Econo-Rack Group Inc. /Le Groupe Econo-Rack Inc. now known as Konstant Inc. (Respondent) *(Granted)*

SALE OF A BUSINESS

1305-09-R: Teamsters Local Union No. 419 (Applicant) v. Morris Brown & Sons Company Limited, Provincial Fruit Company Limited and, Rite Pak Produce Co. Limited (Respondent) v. UFCW Canada, Local 1993 (Intervener) *(Dismissed)*

3713-09-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Highline Mushrooms Inc. (Respondent) *(Withdrawn)*

0513-10-R: CUPE Local 1974 (Applicant) v. Kingston General Hospital and, Shared Support Services Southeastern Ontario (Respondent) *(Withdrawn)*

0854-10-R: International Union of Painters and Allied Trades Local 1891 (Applicant) v. Alliance Environmental and Abatement Contractors Inc. and, 930340 Ontario Inc. c.o.b. as B&B Abatement and Insulation (Respondent) *(Granted)*

1201-10-R: Labourers' International Union of North America, Local 493 (Applicant) v. Kona Builders Limited, Capital Construction (2007) Inc. (Respondent) *(Withdrawn)*

2384-10-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Redirack Limited and The Econo-Rack Group Inc. /Le Groupe Econo-Rack Inc. now known as Konstant Inc. (Respondent) *(Granted)*

3286-11-R: United Steelworker, Local 1 - 2010 (Applicant) v. Kenogami Industries Inc., Longlac Wood Industries Inc., Kruger Inc. (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0256-10-R: Nick Assisi (Applicant) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent) v. Raymac Corporation and/or Raymac Homes (Intervener) *(Granted)*

Unit: "all construction employees engaged in the on-site construction of all types of low-rise housing and their natural amenities up to the date of closing or date of occupancy, which ever occurs first, of said housing or part thereof while working in the County of Simcoe and in O.L.R.B. Geographic Area No. 8, namely the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and such other geographic areas to which this agreement may apply to pursuant to Schedule A Article 8 and/or any other appendices save and except employees employed as non-working foremen, watchmen and engineering staff." (1 employees in unit)

0401-10-R: Ken Pilon, on his own behalf and on behalf of a group of employees of David Brown Construction Ltd. (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. David Brown Construction Ltd. (Intervener) *(Granted)*

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of David Brown Construction Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	2
Number of ballots segregated and not counted	0

0418-10-R: Ken Pilon (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. David Brown Construction Ltd. (Intervener) *(Granted)*

Unit: "all employees of the employer engaged in the operating, maintaining oiling or greasing of power driven or power-generating construction equipment as covered in Article 10 – Wage Rates and Classifications of this Agreement, save and except non-working foremen and those persons above the rank of non-working foreman, in the United Counties of Stormont, Dundas and Glengarry." (4 employees in unit)

2214-11-R: Phil Zock (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent) v. Paul Brown and Son Excavating Ltd. (Intervener) *(Withdrawn)*

Unit: "The Company recognizes the Union as the exclusive bargaining agent for all its truck drivers and labourers working in and out of Ingersoll, Ontario, save and except non-working foremen and persons above the rank of non-working foremen." (8 employees in unit)

2473-11-R: Westendorp Delmolition & John Westendorp Enterprises Inc. (Applicant) v. Labourers' International Union of North America, Local 247 (Respondent) *(Terminated)*

3532-11-R: James Alexandre (Applicant) v. International Association of Machinists and Aerospace Workers, Local 235 (Respondent) v. University of Toronto (Intervener) *(Granted)*

Unit: "The Employer recognizes the Union as the exclusive collective bargaining agent with respect to all matters properly arising under the terms of this Agreement for all Working Forepersons, Project Coordinator, Industrial Mechanics/Millwrights, Locksmiths, Apprentice Industrial Mechanic/Millwright, and Industrial Mechanic/Millwrights in the employ of the University of Toronto working in and out of the Facilities and Services and Physical Plant Departments, save and except persons above the rank of Working Foreperson." (14 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	13
Number of ballots segregated and not counted	0

3622-11-R: Mathew Sebastian (Applicant) v. Carpenters' Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America Local 1072 (Respondent) v. D & H Custom Woodworking Ltd. (Intervener) *(Dismissed)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

3033-09-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) on its own behalf and on behalf of its Local 6500 and its Local 6200 (Applicant) v. Vale Inco Limited (Respondent) *(Granted)*

3896-09-U; 4052-10-U: Edward L. Reid (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Molson Canada 2005 (Intervener) *(Dismissed)*

0697-10-U: CUPE Local 1974 (Applicant) v. Kingston General Hospital (Respondent) *(Withdrawn)*

2255-10-U: Laurentiu Cornateanu (Applicant) v. C.A.W. National Automobile, Aerospace, Transportation and General Workers Union of Canada (Respondent) v. Ontario Lottery and Gaming (Intervener) *(Dismissed)*

2464-10-U: Randy Meyer, Rocco Di Rienzo (Applicant) v. Canadian Union of Public Employees and its Local 1487 (Respondent) v. The Scarborough Hospital (Intervener) *(Dismissed)*

3832-10-U; 1674-11-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. 6N Silicon Inc. (Respondent) *(Withdrawn)*

4028-10-U: Lynn Giroux (Applicant) v. United Food and Commercial Workers International Union, Locals 175 and 633 (Respondent) v. Loblaw Companies Limited (Intervener) *(Withdrawn)*

4044-10-U; 4130-10-U: Craig Seward (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Respondent) *(Terminated)*

4052-10-U: Edward L. Reid (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Molson Canada 2005 (Intervener) *(Dismissed)*

0623-11-U: Martin William Steinfort (Applicant) v. United Steel, Paper and Foresty, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 343-09 (Respondent) *(Dismissed)*

0630-11-U: International Association of Machinists and Aerospace Workers Local 1295 (Applicant) v. Crown Hospitality Suites Inc. o/a Super 8 (Respondent) *(Withdrawn)*

0633-11-U: Mario Cervi (Applicant) v. CAW Canada (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

0879-11-U: Bill Milne (Applicant) v. Big Bear Employees Association (Respondent) *(Withdrawn)*

0958-11-U: Anna Carmela Manna (Applicant) v. Local 4948 - Toronto Public Library Workers Union (Respondent) v. Canadian Union of Public Employees, Toronto Public Library Board (Intervener) *(Dismissed)*

1359-11-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Firan Technology Group Corporation (Respondent) *(Withdrawn)*

1387-11-U: Canadian Union of Public Employees and its Local 4987 (Applicant) v. Retirement Residence Operation (Reit) "Bough Beeches Place" (Respondent) *(Withdrawn)*
1588-11-U: Tony Conte (Applicant) v. CUPE Local 145 (Respondent) *(Withdrawn)*

1663-11-U: James Wither (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 444 (Respondent) v. Windsor Casino Limited (Caesars Windsor) (Intervener) *(Dismissed)*

2101-11-U: Daniel Joseph Dagenais (Applicant) v. Teamsters Local Union No. 879 (Windsor) (Respondent) v. Canada Building Materials, St Marys Cement Inc. (Intervener) *(Withdrawn)*

2106-11-U: Service Employees International Union Local 1 Canada (Applicant) v. Access Apartments for Physically Disabled Adults in Toronto (Respondent) *(Withdrawn)*

2160-11-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Paul Brown & Son Excavating Ltd. (Respondent) *(Withdrawn)*

2246-11-U: Jean Brown (Applicant) v. National Automobile, Aerospace, Transportation and General Workers of Canada (CAW-Canada) and its Local 302 (Respondent) v. Revera Retirement LP carrying on business as Charlotte Villa Retirement Residence (Intervener) *(Terminated)*

2437-11-U: Raymond Downer (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Schenker of Canada Limited (Intervener) *(Dismissed)*

2461-11-U: Retail, Wholesale and Department Store Union, District Council of the United Food and Commercial Workers International Union (Applicant) v. Best Blasting Mats Inc. (Respondent) *(Withdrawn)*

2640-11-U; 2758-11-U: Labourers' International Union of North America, Local 247 (Applicant) v. John Westendorp Westendorp Demolition and John Westendorp Enterprises Inc. (Respondent); John Westendorp Enterprises Inc. (Applicant) v. Labourers' International Union of North America, Local 247 & Steve Axelson (Respondent) *(Terminated)*

2675-11-U: Service Employees International Union, Local 1 Canada (Applicant) v. Four Elms Retirement Residence (Respondent) *(Withdrawn)*

2691-11-U: Jai Mohabir (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada), Local 252 (Respondent) v. Nestle Canada Inc. (Intervener) *(Dismissed)*

2795-11-U: Anellino Ranieri (Applicant) v. United Steel Workers of America Local 455 of Welland (Respondent) *(Withdrawn)*

2869-11-U: Juan Vasquez (Applicant) v. Service Employees International Union Local 1 (Respondent) v. Mount Sinai Hospital (Intervener) *(Terminated)*

2932-11-U: Communications, Energy and Paperworkers Union of Canada, Local 1701 (Applicant) v. Sanofi Pasteur Ltd. (Respondent) *(Withdrawn)*

2936-11-U: Labourers' International Union of North America, Local 506 (Applicant) v. Traugott Building Contractors Inc. (Respondent) *(Withdrawn)*

2943-11-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Solowave Design Inc. (Respondent) *(Withdrawn)*

2947-11-U: Sean Smith (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Withdrawn)*

2960-11-U: Dung Nguyen (Applicant) v. United Steelworkers Local 9042 (Respondent) v. Silex Innovations Inc. (Intervener) *(Dismissed)*

2974-11-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Housekeepers of Canada Inc. and, Anne Crawford (Respondent) *(Withdrawn)*

3005-11-U: Laura Karen Kuca (Applicant) v. Ontario Public Service Employees Union (Respondent) v. George Brown College (Intervener) *(Dismissed)*

3046-11-U: Alwan A. Ibrahim (Applicant) v. USWA Local 5296 (Respondent) *(Withdrawn)*

3076-11-U: Susan Jukes (Applicant) v. CAW, Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

3099-11-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. True South Renewables Canada Ltd. (Respondent) *(Endorsed Settlement)*

3115-11-U: Ontario Nurses' Association (Applicant) v. Lakeridge Health Corporation (Respondent) *(Withdrawn)*

3124-11-U: Slavica Holjevac (Applicant) v. CUPE LOCAL formerly 778 now 7800 (Respondent) *(Dismissed)*

3126-11-U: Canadian Office and Professional Employees Union Local 343 (Applicant) v. Teamsters Local Union 938 (Respondent) *(Withdrawn)*

3164-11-U: Richard Novak, Anne-Marie Long, John Ota, Tamaris Yakimishyn, Lori Hunt, Valerie Tourikian (RPBA's) (Applicant) v. Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO) (Respondent) *(Dismissed)*

3181-11-U: Richard King (Applicant) v. Local 27 of the United Brotherhood Carpenters and Joiners of America c/o The Board of Trustees of the Carpenters' Local 27 Pension Plan c/o Helen Duniec of Manion, Wilkins & Associates Ltd. and Carpenters' Local 27 Pension Plan and, Trustees of the Pension Plan for Members of Local 18 of the United Brotherhood of Carpenters and Joiners of America c/o Lawrence Administrative Service and Chris Selzer-Comeau of Carpenters Local 18 Pension Plan (Respondent) *(Dismissed)*

3197-11-U: United Food & Commercial Workers Canada, Locals 175 & 633 (Applicant) v. Imperial Parking Canada Corporation (Respondent) *(Withdrawn)*

3355-11-U: Toronto Civic Employees' Union, Local 416, Canadian Union of Public Employees (Applicant) v. City of Toronto (Respondent) *(Withdrawn)*

3455-11-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Safety-Kleen Canada Inc. (Respondent) *(Withdrawn)*

3483-11-U: Sheriff R. Sesay (Applicant) v. International Association of Machinists and Aerospace Workers (IAMAW) Union (Respondent) *(Dismissed)*

3684-11-U: PCL Constructors Canada Inc. (Applicant) v. Labourers' International Union of North America, Local 506 (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

2942-11-M: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Solowave Design Inc. (Respondent) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO PROSECUTE

2641-11-U: Labourers' International Union of North America, Local 247 (Applicant) v. John Westendorp Westendorp Demolition and John Westendorp Enterprises Inc. (Respondent) *(Terminated)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

3567-11-M: Sobeys Orangeville (Applicant) v. United Food and Commercial Workers International Union, Local 175 & 633 (Respondent) *(Granted)*

JURISDICTIONAL DISPUTES

0553-11-JD: Board of Governors of Exhibition Place (Applicant) v. Labourers' International Union of North America, Local 506 and, United Brotherhood of Carpenters and Joiners of America, Local 27, Phoenix Restorations (Respondent) *(Endorsed Settlement)*

1331-11-JD: Calabria Cement & Tile (Applicant) v. Brick and Allied Craft Union of Canada, Local 28 and, Labourers' International Union of North America, Local 1036 (Respondent) v. Terrazzo, Tile & Marble Guild of Ontario Inc. (Intervener) *(Terminated)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1317-11-OH: (Applicant) v. The Big Apple Limited (Respondent) *(Dismissed)*

1763-11-OH: Jiexin Yin (Applicant) v. Agreatsun Welding Ltd. (Respondent) *(Withdrawn)*

2205-11-OH: Caitlin Copeland (Applicant) v. Clarkenney Inc o/a Tim Horton's (Respondent) *(Withdrawn)*

2307-11-OH: George M. Chernawski (Applicant) v. The Corporation of the City of Windsor (Respondent) *(Terminated)*

2438-11-OH: Raymond Downer (Applicant) v. Schenker of Canada Limited (Respondent) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Intervener) *(Dismissed)*

3074-11-OH: Shari Petro (Applicant) v. The Beer Store (Respondent) *(Dismissed)*

3438-11-OH: Bijan Ghayouri Driver Examiners @ M. East Dec. and all Driver Examiner who are part of USW Local 9511 and employed by Serco Des Inc. (Applicant) v. Serco Des Inc. (Respondent) *(Dismissed)*

3441-11-OH: Katherine Pamela Landon (Applicant) v. Orthodent Ltd. Bill Van Evans Lorne Pennie Lionel Dwyer (Respondent) *(Dismissed)*

3477-11-OH: Dennis Ralf (Applicant) v. Tubby's Truck and Trailer (Respondent) *(Dismissed)*

3555-11-OH: Robert Gallwey (Applicant) v. All Ontario Recycling Inc. (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

0784-Y5-G; 2836-08-G: Ontario Sheet Metal Workers' and Roofers' Conference (Applicant) v. Ellis-Don Limited (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. EllisDon Corporation (Respondent) *(Granted)*

2569-09-G; 3581-11-G: International Brotherhood of Electrical Workers, Local 773, International Brotherhood of Electrical Workers, Local 530 (Applicant) v. 1120522 Ontario Inc. c.o.b. as Rose Electric, 1303001 Ontario Limited (Respondent); International Brotherhood of Electrical Workers, Local 115 (Applicant) v. 1303001 Ontario Limited c.o.b. Blenheim Electric (Respondent) *(Terminated)*

2753-10-G: Universal Workers Union, L.I.U.N.A., Local 183 (Applicant) v. Hydro One Inc. and/or, Hydro One Networks Inc. (Respondent) *(Terminated)*

3735-10-G: Labourers' International Union of North America, Local 1059 and The Formwork Council of Ontario (Applicant) v. FGC Limited (Respondent) *(Terminated)*

4287-10-G: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Hydro One Inc./Hydro One Networks Inc. (Respondent) *(Withdrawn)*

0040-11-G: International Brotherhood Of Electrical Workers, Local 1687 (Applicant) v. Honeywell Limited (Respondent) *(Withdrawn)*

1108-11-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Dufferin Construction Company (Respondent) *(Withdrawn)*

2366-11-G: Labourers' International Union of North America, Local 247 (Applicant) v. Westendorp Demolition & John Westendorp Enterprises Inc. (Respondent) *(Terminated)*

2465-11-G: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and its Local 128 (Applicant) v. ES Fox Constructors Ltd. (Respondent) *(Withdrawn)*

2817-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. STG Construction Ltd. / SEBCO Contracting Ltd. (Respondent) *(Endorsed Settlement)*

2836-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 628 (Applicant) v. E.S. Fox Ltd. (Respondent) *(Withdrawn)*

2937-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. Specialty Precast Erectors Limited (Respondent) *(Withdrawn)*

2957-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Aquavac o/a 614128 Ontario Ltd., 614128 Ontario Ltd. o/a Trisan Construction (Respondent) *(Withdrawn)*

3038-11-G: Labourers' International Union of North America, Local 527 (Applicant) v. PCL Constructors Canada Inc. (Respondent) *(Withdrawn)*

3053-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. PCL Constructors Canada Inc. (Respondent) *(Withdrawn)*

3075-11-G: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Penalta Group Ltd. (Respondent) *(Withdrawn)*

3151-11-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ducan Ceiling & Walls Systems of Oshawa Limited and, Richard Kok (Respondent) *(Endorsed Settlement)*

3233-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. 1086289 Ontario Inc. c.o.b. as Urban Electrical Contractors (Respondent) *(Endorsed Settlement)*

3261-11-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. H & M Contractors Inc. (Respondent) *(Withdrawn)*

3333-11-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Bomben Plumbing & Heating Ltd. (Respondent) *(Endorsed Settlement)*

3382-11-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Ebs and/or EBS Engineering & Construction Limited (Respondent) *(Withdrawn)*

3393-11-G: Iron Workers District Council of Ontario International Association of Bridge, Structural, Ornamental and Reinforcing iron Workers, Local 765 (Applicant) v. Burnco Manufacturing Inc. (Respondent) *(Withdrawn)*

3394-11-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chislett Asphalt Roofing Ltd. (Respondent) *(Endorsed Settlement)*

3397-11-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Metro Hoisting and Erecting Limited and Jason Leibeck (Respondent) *(Endorsed Settlement)*

3399-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. TF Group (Forming) Inc. (Respondent) *(Granted)*

3404-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 221 (Applicant) v. 1622294 Ontario Inc. o/a Universal Mechanical & Construction Services (Respondent) *(Granted)*

3405-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Tamray Contracting Inc. (Respondent) *(Granted)*

3413-11-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. TSL Limited and/or Toddglen Group of Companies (Respondent) *(Dismissed)*

3415-11-G: The Formwork Council of Ontario and Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Hardwall Construction (A Division of 878354 Ontario Limited), 1068132 Ontario Ltd. and/or, 1611570 Ontario Ltd. and/or, Alpine Forming Co. and/or, Hardwall Construction (2005) (Respondent) *(Withdrawn)*

3463-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Sterling Tile & Carpet (Respondent) *(Withdrawn)*

3504-11-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Edward C. Kosciuch c.o.b. as All City Drywall & Acoustics (Respondent) *(Endorsed Settlement)*

3510-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Jones Group (Respondent) *(Granted)*

3511-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Concord Earthmoving Limited (Respondent) *(Granted)*

3528-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Otomic Contractors Ltd. (Respondent) *(Granted)*

3530-11-G: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. 2211311 Ontario Inc. (Respondent) *(Granted)*

3533-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. PCL Constructors Canada Inc. (Respondent) *(Terminated)*

3538-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Cosentino Construction Limited (Respondent) *(Granted)*

3564-11-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Edward C. Kosciuch c.o.b. as All City Drywall & Accoustics/All City Drywall and Acoustics Inc./ All City Drywall Corporation (Respondent) *(Endorsed Settlement)*

3584-11-G: Universal Workers Union, L.I.U.N.A., Local 183 (Applicant) v. Donscape Landscaping Services (Respondent) *(Withdrawn)*

3586-11-G: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

3589-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Canadian Independent Sod Ltd. (Respondent) *(Withdrawn)*

3594-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Dream Team Painting Ltd. (Respondent) *(Granted)*

3614-11-G: A Council of Trade Unions Acting as the Representative and Agent of Teamsters' Local Union 230 and Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. J.V.A. Construction Inc. (Respondent) *(Granted)*

3616-11-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Tybrecam Installations Inc. (Respondent) *(Granted)*

3670-11-G: International Union of Elevator Constructors, Local 96 (Applicant) v. Regional Elevator (Respondent) *(Withdrawn)*

APPEALS - EMPLOYMENT STANDARDS ACT

3169-Y7-ES; 3170-07-ES: Elizabeth Anne Albert (Applicant) v. Tenatronics Limited and, Director of Employment Standards (Respondent); Lynn Blanchard (Applicant) v. Tenatronics Limited and, Director of Employment Standards (Respondent) *(Dismissed)*

0541-08-ES: HDS Graphics Group Inc. (Applicant) v. John Devine and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2072-08-ES: Catherine Leung (Applicant) v. Mega Computer Systems Inc., Director of Employment Standards (Respondent) *(Withdrawn)*

2684-09-ES: Christopher J. Shaw (Applicant) v. Lally Sales & Service Ltd. and/or 1741064 Ontario Ltd. o/a Lally Southpoint Ford and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3622-09-ES: William Teeple, a Director of Tirecraft Auto Centers (Operations) Ltd. (Applicant) v. Guy Kelly, Leroy Lear, Steve Hodgins, Jeffery Cullen, James Doughty, Neil Hickey, Kenny Gilbert, John Lee Williamson, Michel Carriere, Lawrence Chatterton, Stephen Murphy, Robert Yurman, Lance Youmans, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2743-10-ES: Michel Jacob (Applicant) v. Benson Group Inc. o/a Auto-Pak Ltd. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3530-10-ES: Michael Levick (Applicant) v. 1745428 Ontario Inc. o/a Newcastle Salvage, and Director of Employment Standards (Respondent) *(Withdrawn)*

3670-10-ES: Elena Mahadeo (Applicant) v. Veolia Transportation Services (Canada), Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3672-10-ES: 1690240 Ontario Limited o/a West End Groceries (Applicant) v. Shelly Slobozian, and Director of Employment Standards (Respondent) *(Granted)*

3684-10-ES: Vasko Designs Body Jewelry Inc. (Applicant) v. Natalie Nadon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3732-10-ES: Nadlan Property Management Inc. operating as Nadlan-Harris Management (Applicant) v. Sudhanshu Gaur and, Director of Employment Standards (Respondent) *(Granted)*

3775-10-ES: Satanaporn Ruangsakulrach (Applicant) v. Credico Marketing Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3830-10-ES: J. Macdonald a.k.a. Jane Macdonald o/a Jane's Garden Flowers and Gift and 1650864 Ontario Inc. o/a Dunlop Lake Lodge (Applicant) v. Christine Lawson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4034-10-ES: SOMA Networks Canada Corporation (Applicant) v. Ke Chen and, Director of Employment Standards (Respondent) *(Granted)*

4036-10-ES: CCL Financial Inc. (Applicant) v. Nicole Sova and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

4076-10-ES: GSI International Consulting Group (Applicant) v. Christopher Oladimeji and, Director of Employment Standards (Respondent) *(Dismissed)*

0090-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Jamie Spencer and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0095-11-ES: Frederick Samuel White (Applicant) v. 2215515 Ontario Inc. o/a Swiss Chalet Rotisserie & Grill and, Director of Employment Standards (Respondent) *(Dismissed)*

0414-11-ES; 0415-11-ES: 1659488 Ontario Limited Operating as Mancuso's Trattoria (Applicant) v. Tara Piccinato, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0505-11-ES: Nor-Don Collection Network Inc. (Applicant) v. Adrian Dunn and, Director of Employment Standards (Respondent) *(Dismissed)*

0526-11-ES: Risa Maldonado (Applicant) v. 2024624 Ontario Inc. o/a Tanned Bodies Sun Tan Studio and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0593-11-ES: Chemi Pharmaceutical Inc. (Applicant) v. Senthuri Senthivel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0685-11-ES: Jon Cescolini (Applicant) v. 2155091 Ontario Ltd. o/a Rockford's Bar and Grill, Director of Employment Standards (Respondent) *(Withdrawn)*

0759-11-ES: Erin Park Automotive Limited (Applicant) v. Sydney Baichulall, Stefan Barko, Rosario Fernandes, Mukunthan Krishnamoorthy, Paul Petkovski, Rick Pike, Vajira Premawardena, William Site, Somany Kim, Domenico Tavella and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1004-11-ES: Management Corp of Canada Ltd. (Applicant) v. Samuel Jones and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1060-11-ES: Damian Young (Applicant) v. Langstaff Construction Ltd. and Fiber-Con Network Infrastructures Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1218-11-ES: Madon Taheem (Applicant) v. Commonwealth Brick and Building Supplies Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1219-11-ES: Anthony Wohlfarth (Applicant) v. Carleton University o/a Carleton University Academic Staff Association (CUASA) and, Director of Employment Standards (Respondent) *(Withdrawn)*

1226-11-ES: Granton Institute of Technology Limited (Applicant) v. Valerie Lee and, Director of Employment Standards (Respondent) *(Withdrawn)*

1248-11-ES: Mark Woods (Applicant) v. Ministry of Community Safety and Correctional Services and, Director of Employment Standards (Respondent) *(Granted)*

1253-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Jamie Smith and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1254-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Sherry Tomko and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1316-11-ES: (Applicant) v. The Big Apple Limited, Director of Employment Standards (Respondent) *(Dismissed)*

1348-11-ES: The Consilium Group (Applicant) v. James Wyman, and Director of Employment Standards (Respondent) *(Granted)*

1389-11-ES: Amedeo Picano (Applicant) v. Moldenhauer Developments Inc., Moldenhauer Lifestyles Inc., and 2068897 Ontario Inc., Director of Employment Standards (Respondent) *(Dismissed)*

1434-11-ES: MxN Media Technology Group Inc (Applicant) v. Rongjie Xu, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1437-11-ES: Tahereh Hejazikalan (Applicant) v. The Governing Council of the Salvation Army in Canada/Conseil de Direction de L'Armee du Salut du Canada/ The Salvation Army and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1451-11-ES: Gino Talamo (Applicant) v. H&R Construction Management Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1575-11-ES: 1695532 Ontario Inc. operating as Pioneer Snack Express (Applicant) v. Eleanor McMaster and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1618-11-ES: Pediatric Aids Canada USA (Applicant) v. Mandy Sebok and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1628-11-ES: Lionel Koffler (Applicant) v. Luzvim Grace T. Almeda and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1653-11-ES: Lisa Dowling (Applicant) v. Sinful Inflictions Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1847-11-ES: 1768394 Ontario Inc. o/a The Roy Public House (Applicant) v. Leane Funk and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1864-11-ES: 1607446 Ontario Limited (Applicant) v. Anne-Maria Lanting and, Director of Employment Standards (Respondent) *(Withdrawn)*

1997-11-ES: Colborne Street Limited Partnership o/a Residence Inn by Marriott (Applicant) v. Wendy Agnew and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2018-11-ES: Nordex Explosives (Ontario) Limited (Applicant) v. Joshua Lachapelle, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2019-11-ES: 953546 Ontario Inc. o/a Mather Management Services (Applicant) v. Cassandre Beacock, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2145-11-ES: 1789341 Ontario Inc. operating as Applejack's (Applicant) v. Sage Brancatti and, Director of Employment Standards (Respondent) *(Withdrawn)*

2339-11-ES: Prince Morris (Applicant) v. The Governing Council of the Salvation Army in Canada/Conseil de Direction de L'Armée du Salut du Canada and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2346-11-ES: Sami And Naji Hari Design And Spa Inc. (Applicant) v. Janeen Deeb and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2347-11-ES: Daniel Cordeiro, a director of 2216456 Ontario Inc. o/a The Big Smoke Barbeque (Applicant) v. Adrian Bell and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2359-11-ES: Amir Shahin (Applicant) v. Snap On Tools - Snap On Equipment and, Director of Employment Standards (Respondent) *(Dismissed)*

2380-11-ES: Dimpflmeier Bakery Limited (Applicant) v. Regina Reddig and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2476-11-ES: Patrick Asiedu (Applicant) v. U-Pak Disposals (1989) Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2489-11-ES: Brimell Motors Limited (Applicant) v. Ziaoya (Alice) Zhong and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2518-11-ES: RPM Rollforming Limited (Applicant) v. Craig Stewart and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2522-11-ES: Royal Foods Ltd. (Applicant) v. Mohamed Haitham Nabulsi and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2597-11-ES: Peter Kazmer (Applicant) v. The Cash Store Financial Services Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2632-11-ES: Trevor Neely (Applicant) v. Securitas Canada Limited/Securitas Canada Limitee and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2646-11-ES: Nutra Services Inc. (Applicant) v. Dobrila Kvas, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2769-11-ES: Lightform Canada Inc. (Applicant) v. Faizah Hossindjani and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2806-11-ES; 2807-11-ES: 2241601 Ontario Inc. operating as New Wave Cafe (Applicant) v. Nicole Sheppard and, Director of Employment Standards (Respondent); 2241601 Ontario Inc. operating as New Wave Cafe (Applicant) v. Scott Finlayson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2815-11-ES: 1239684 Ontario Inc. o/a Mike Stec Trucking (Applicant) v. Raphael Thibault and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2856-11-ES: Faber Stone & Tile Inc. (Applicant) v. Shelley Francis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2884-11-ES: The Oshawa/Durham Central Newspaper Ltd. (Applicant) v. Cynthia-Joy Webber and, Director of Employment Standards (Respondent) *(Dismissed)*

2886-11-ES: Marianna Gagliardi (Applicant) v. Christine's Fitness & Personal Training Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2891-11-ES: 2040113 Ontario Inc. o/a Print Factory Inc. (Applicant) v. Catherine Weatherston and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2970-11-ES: 1760415 Ontario Inc. Operating as Busters Bar and Grill (Applicant) v. Sharon Dumouchel and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3012-11-ES: 666518 Ontario Inc. operating as Dairy Queen (Applicant) v. Ms. Cynthia L. Deschamps, Director of Employment Standards (Respondent) *(Dismissed)*

3029-11-ES: Raymond Aplin o/a Raes Auto Sales (Applicant) v. Ricky Boyd, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3050-11-ES: 2265118 Ontario Inc. o/a Victoria Tavern (Applicant) v. Valerie Pigeon and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3051-11-ES: IBM Canada Limited/IBM Canada Limitée (Applicant) v. Karl (Jeff) Penthor and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3078-11-ES: 1462481 Ontario Inc / Tim Hortons (Applicant) v. Amina Hassan, Director Of Employment Standards (Respondent) *(Endorsed Settlement)*

3101-11-ES: Jeff Saunders (Applicant) v. Harco Publishing Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3165-11-ES: 2246735 Ontario Inc. operating as Sky Restaurant & Cocktail Lounge (Applicant) v. Jamelia K. Holness and, Director of Employment Standards (Respondent) *(Terminated)*

3167-11-ES: Exacta Tool 2010 ULC (Applicant) v. Shamlall Manny and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3187-11-ES: Manouchehr Ahmadi-Jorny, Tony Manziani, Amir Manziani, Directors of 1698020 Ontario Inc. (Applicant) v. Shanjida Rashid and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3189-11-ES: Mark McCracken (Applicant) v. Svendsen Bros. Automotive Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3199-11-ES: Myra Aileen Joan Morton (Applicant) v. Garden City Inc. operating as Kells Garden City and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3200-11-ES: P.A.Y.D. People Against Youth on Drugs operating as People Against Youth on Drugs (PAYD) (Applicant) v. Sevim Coskun and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3213-11-ES: Jason Kaus (Applicant) v. Midland Golf and Country Club, Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3229-11-ES: McIsaac Construction Inc. (Applicant) v. Adam Deschamps and, Director of Employment Standards (Respondent) *(Terminated)*

3243-11-ES: Wayne Gregor (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3258-11-ES: Hardial Dhir Architects Inc. (Applicant) v. Harry Meliste, Director of Employment Standards (Respondent) *(Terminated)*

3297-11-ES: Garden City Inc. operating as Kells Garden City (Applicant) v. Myra Morton and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3306-11-ES: Derek Wilson (Applicant) v. Rawley Resort & Marina Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3322-11-ES: Rivard's Sawmill Builders' Supply Co. Ltd. (Applicant) v. Margaret Reaume and, Director of Employment Standards (Respondent) *(Terminated)*

3347-11-ES: Kyungsoon Hwang operating as Momiji Sushi Bar & Grill (Applicant) v. Theodore Hyun- Chul Lee and, Director of Employment Standards (Respondent) *(Dismissed)*

3419-11-ES: Alfred Briggs (Applicant) v. Dufferin Iron & Railings Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

3422-11-ES: 6910009 Canada Inc. o/a Vaughan Chrysler Dodge Jeep (Applicant) v. Gaspare Genova, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3424-11-ES: 6910009 Canada Inc. o/a Vaughan Chrysler Dodge Jeep (Applicant) v. Salvatore Bruno, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3443-11-ES: Miroslava Mitic (Applicant) v. Startec Telephone Company Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

3452-11-ES: Galaxy Alarm Systems Ltd. (Applicant) v. Ian McGregor and, Director of Employment Standards (Respondent) *(Dismissed)*

3453-11-ES: Wajax Industries (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3459-11-ES: SolarTech (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3461-11-ES: Ce Aerial Lift Service Inc. o/a Certified Equipment Sales Services and Rental Ltd. (Applicant) v. Constantino Politis, Director Of Employment Standards (Respondent) *(Terminated)*

3467-11-ES; 3468-11-ES: 2164959 Ontario Ltd. o/a Double L's Farm (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3470-11-ES: Patrick Mark Niewiadomski operating as Built to Last Renovations (Applicant) v. Mark Del Piero, Director of Employment Standards (Respondent) *(Dismissed)*

3497-11-ES: Four Seasons Outdoor Recreation (NWO) Ltd. (Applicant) v. Michael McGarrity, Director of Employment Standards (Respondent) *(Terminated)*

3498-11-ES: Four Seasons Outdoor Recreation (NWO) Ltd. (Applicant) v. Michael McGarrity, Director of Employment Standards (Respondent) *(Terminated)*

3566-11-ES: Rivard's Sawmill Builders' Supply Co. Ltd. (Applicant) v. John Woods, Director of Employment Standards (Respondent) *(Terminated)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

1207-10-HS: Xstrata Canada Corporation (Applicant) v. United Steelworkers, Local 2020 and, Rick Kulyski, Inspector (Respondent) v. Sudbury Mine, Mill & Smelter Workers Union Local 598/CAW (Intervener) *(Withdrawn)*

2306-11-HS: The Canadian Union of Public Employees, Local 543 (Applicant) v. Helga Reidel and, Darren Varga, Inspector (Respondent) *(Withdrawn)*

2868-11-HS: Better Box Inc. (Applicant) v. Adrian David, inspector (Respondent) *(Withdrawn)*

2887-11-HS: Northwestern Health Unit (Applicant) v. Canadian Office and Professional Employees and, Lyle Wiebe, Inspector (Respondent) *(Withdrawn)*

3140-11-HS: Leon's Furniture Limited (Applicant) v. Kelly Sebastian - Inspector (Respondent) *(Withdrawn)*

3558-11-HS: Northview Nursing Home (Applicant) v. CUPE Union, Local 4709, Anne Nuhn, Tony Fontana, Inspector (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE SMOKE-FREE ONTARIO ACT

3245-11-M: Harold J. Lajambe (Applicant) v. Trail Blazer Trucking Ltd. (Respondent) *(Dismissed)*

PAY EQUITY ACT

3667-09-PE; 2669-09-PE: Service Employees International Union Local 1 Canada (Applicant) v. Revera LTC - Blenheim Community Village (Respondent); Service Employees International Union Local 1 Canada (Applicant) v. Harold and Grace Baker Centre (Respondent) *(Endorsed Settlement)*

0127-11-PE: Brenda Sefeldas (Applicant) v. Huron University College (Respondent) *(Withdrawn)*

REFERRAL FROM MINISTER (SEC. 3(2)) HLDA

1667-10-M: Canadian Union of Public Employees (Applicant) v. Bayfield Homes Ltd. (Respondent) *(Granted)*

2135-10-M: Ontario Public Service Employees Union and its Local 213 (Applicant) v. Kinark Child and Family Services - Syl Apps Youth Centre (Respondent) *(Dismissed)*

3576-11-M; 3583-11-M: The Palisades Ottawa Retirement Residence Inc. (Applicant) v. Teamsters Local Union No. 91 (Respondent); The Redwoods Ottawa Retirement Residence Inc. (Applicant) v. Teamsters Local Union No. 91 (Respondent) *(Terminated)*

REFERRAL FROM MINISTER (SECTION 115)

3284-11-M: Ontario Nurses' Association ("Union") (Applicant) v. Idlewyld Manor Corporation (Respondent) *(Terminated)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1008-11-U: Svitlana Novak (Applicant) v. International Association of Machinists and Aerospace Workers, Hotel and Healthcare Workers, Local 1295 (Respondent) v. Ukrainian Canadian Care Centre (Intervener) *(Dismissed)*

2566-11-U: Magda Bajjali (Applicant) v. Service Employees International Union Local 2 BGPWU (Respondent) *(Dismissed)*

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MARCH 2012

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

0377-08-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Colour Performance Painters & Decorators Ltd. (Respondent)

Unit: "all painters and painters apprentices in the employ of Colour Performance Painters & Decorators Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters apprentices in the employ of Colour Performance Painters & Decorators Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (43 employees in unit)

2227-10-R: Ontario Sheet Metal Workers' & Roofers' Conference (Applicant) v. Kiewit - Alarie, A Partnership (Respondent) v. Electrical Power Systems Construction Association (Intervener)

Unit: "all sheet metal workers, sheet metal workers' apprentices, sheeters, sheeters' assistants and material handlers in the employ of Kiewit-Alarie, A Partnership in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all sheet metal workers, sheet metal workers' apprentices, sheeters, sheeters' assistants and material handlers in the employ of Kiewit-Alarie, A Partnership in all sectors of the construction industry in that portion of the District of Cochrane north of the 50th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (7 employees in unit)

3767-10-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Royal Plumbing and Contracting Ltd. (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Royal Plumbing and Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of Royal Plumbing and Contracting Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

0042-11-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Com-Kote Interiors Inc. and/or Com-Kote Inc. (Respondent)

Unit: "all painters and painters apprentices in the employ of Com-Kote Interiors Inc. and/or Com-Kote Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and. all painters and painters apprentices in the employ of Com-Kote Inc. and/or Com-Kote Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman." (14 employees in unit)

0298-11-R: Ontario Council of Construction Unions (Applicant) v. Stirling Bridge Limited (Respondent)

Unit: "all construction labourers in the employ of the Stirling Bridge Limited in all sectors of the construction industry other than the industrial, commercial and institutional sector in the County of Brant and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Norfolk, the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

1349-11-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. The Dalton Company Limited (Respondent)

Unit: "all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of The Dalton Company Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices and all pipefitters and pipefitters' apprentices in the employ of The Dalton Company Limited in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

3457-11-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Mike Tinker Electric Limited and 2172469 Ontario Inc. (Respondent)

Unit: "all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Mike Tinker Electric Limited and 2172469 Ontario Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of Mike Tinker Electric Limited and 2172469 Ontario Inc. in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

3577-11-R: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. 1205448 Ontario Inc. o/a Delsan Electric (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen and journeymen and apprentice network cabling specialists and communication installers in the employ of 1205448 Ontario Inc. o/a Delsan Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen and journeymen and apprentice network cabling specialists and communication installers in the employ of 1205448 Ontario Inc. o/a Delsan Electric in all other sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

3609-11-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Centennial Construction and Contracting (Niagara) Inc. (Respondent)

Unit: "all construction labourers in the employ of Centennial Construction and Contracting (Niagara) Inc. in all sectors of the construction industry in the County of Grey, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3759-11-R: International Union of Operating Engineers, Local 793 (Applicant) v. Shallow-Brook Excavating (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Shallow-Brook Excavating in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of Shallow-Brook Excavating in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (2 employees in unit)

3809-11-R: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Jangho Curtain Wall Canada Co., Ltd. (Respondent) v. Iron Workers Local 721 (Intervener)

Unit: "all glaziers, glaziers¿ apprentices and metal mechanics in the employ of Jangho Curtain Wall Canada Co., Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all glaziers, glaziers apprentices and metal mechanics in the employ of Jangho Curtain Wall Canada Co., Ltd in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (17 employees in unit)

3819-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 1261679 Ontario Ltd. and/or Raytek Communications (Respondent)

Unit: "all construction labourers in the employ of 1261679 Ontario Ltd. and/or Raytek Communications in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0407-10-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Deluca Roofing Inc. c.o.b. as Robdel Roofing Inc. (Respondent) v. Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all employees of Deluca Roofing Inc. c.o.b. as Robdel Roofing Inc. who perform the work described in Schedule "A" of the Residential Roofing Agreement as well as the metalmen employed by Deluca Roofing Inc. c.o.b. as Robdel Roofing Inc. who perform the work described in Schedule "B" of the Residential Roofing Agreement excluding non-working foremen, hourly servicemen, flat roofers, aluminum/vinyl applicators, persons engaged in re-roofing, office, warehouse/shop workers, clerical workers and persons above the rank of foreman engaged in the application of shingles and other roofing materials in new subdivision work (3 or more units) in residential low-rise buildings (defined as non-elevated housing of not more than four (4) storeys in height excluding basement) in the Province of Ontario" (13 employees in unit) *(Having regard to the agreement of the parties.) (Clarity)*

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	19

2436-11-R: Ontario Workers' Union (Applicant) v. Specialty Care Woodspark Inc. (Respondent) v. Service Employees International Union, Local 1 Canada (Intervener)

Unit: "all employees at Woodspark Centre in Barrie save and except registered and graduate nurses, physiotherapists, occupational therapists, coordinators of activity, leisure and volunteers, chef, maintenance staff, supervisors, foremen, all persons above the rank of supervisor or foreman and office and reception staff and students" (120 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	163
Number of persons who cast ballots	110
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	109
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	55
Number of ballots marked against applicant	54
Number of ballots segregated and not counted	1

2912-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Scarborough Centre for Healthy Communities (Respondent)

Unit: "all employees of Scarborough Centre for Healthy Communities in the city of Toronto save and except Manager, persons above the rank of Managers and Medical Doctors" (96 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	102
Number of persons who cast ballots	85
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	55
Number of segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	64

Number of ballots marked against applicant	17
Number of ballots segregated and not counted	2

3009-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Revera Long Term Care Inc. o/a West Oak Village (Respondent)

Unit: "all employees employed as Registered Nurses by West Oak Village in the City of Oakville, save and except Managers, persons above the rank of Manager, and employees covered by subsisting collective agreements" (13 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

3627-11-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Accuworx Inc. (Respondent)

Unit: "all employees of Accuworx Inc. working in and out of 36 Advance Boulevard, Brampton, save and except sales, office and clerical employees and save and except foremen and persons above the rank of foreman" (24 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	4

3630-11-R: Sheet Metal Worker's International Association Local 540 (Applicant) v. Kilian Canada ULC (Respondent)

Unit: "all employees of Kilian Canada ULC in the City of Etobicoke save and except supervisors and persons above the rank of supervisor; office, clerical and sales staff." (58 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	77
Number of persons who cast ballots	62
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	22

Number of ballots segregated and not counted	11

3641-11-R: U.F.C.W. Local 333 (Applicant) v. InterContinental Hotels Group (Canada) Inc. (DBA: InterContinental Toronto Centre) (Respondent)

Unit: "all employees of InterContinental Hotels Group (Canada) Inc. (DBA: Intercontinental Toronto Centre) 225 Front Street West, Toronto, Ontario, M5V 2X3 employed as security guards save and except supervisors and persons above the rank of supervisors" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

3651-11-R: Healthcare, Office and Professional Employees Union, Local 2220, UBCJA (Applicant) v. Specialty Care Granite Ridge Long Term Care Centre (Respondent) v. Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 (Intervener)

Unit: "all employees of Specialty Care Granite Ridge Long Term Care Centre at Specialty Care Granite Ridge, operated in the City of Ottawa, save end except supervisors and persons above the rank of supervisor, Nurse Managers, Educator, Co-ordinators, Maintenance, Office and Clerical, Para Professional and Professional Therapists" (252 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	247
Number of persons who cast ballots	152
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	151
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	80
Number of ballots marked against applicant	72
Number of ballots segregated and not counted	0

3652-11-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Trinity Village Care Centre (Respondent)

Unit: "All office and clerical employees of Trinity Village Care Centre in the City of Kitchener save and except supervisors, administrative assistant and CQI Coordinator, persons above the rank of supervisor and employees in bargaining units for which any trade union held bargaining rights as of February 15, 2012." (18 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	14

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	8

3667-11-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Stelcrete Industries Ltd. (Respondent)

Unit: "all employees of Stelcrete Industries Ltd., in the City of Welland, save and except supervisors and persons above the rank of supervisor, office, clerical, quality control staff, sales staff and students employed during the school vacation period" (90 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	100
Number of persons who cast ballots	95
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	92
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	48
Number of ballots marked against applicant	44
Number of ballots segregated and not counted	3

3693-11-R: Canadian Union of Public Employees (Applicant) v. JIAS (Jewish Immigrant Aid Services) Toronto (Respondent)

Unit: "all employees employed by JIAS (Jewish Immigrant Aid Services) Toronto in the City of Toronto and the Region of York in its Language Instruction for New Canadians (LINC) Program, save and except supervisors, persons above the rank of supervisors, and persons already represented by a Trade Union" (35 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3743-11-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Auto Warehousing Company Canada Limited (Respondent)

Unit: "all office and clerical employees of Auto Warehousing Company Canada Limited in the county of Oxford, save and except supervisors and those above the rank of supervisor" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

3762-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Denham Corporation Limited o/a Tyndall Estates Retirement Residence (Respondent)

Unit: "all employees of Denham Corporation Limited o/a Tyndall Estates Retirement Residence in the City of Mississauga save and except supervisors, persons above the rank of supervisor and office and clerical employees" (14 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	8

3763-11-R: Retail, Wholesale and Department Store Union, District Council - of the – United Food and Commercial Workers International Union (Applicant) v. Pepsi Bottling Group (Canada) Co. (Respondent)

Unit: "all merchandisers and office/clerical staff of Pepsi Bottling Group (Canada) Co., working in and out of the Greater City of Sudbury, Ontario, and the City of North Bay, Ontario, save and except supervisors and forepersons, those above the rank of supervisor and foreperson and sales representatives" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

3785-11-R: Ontario Public Service Employees Union (Applicant) v. CML HealthCare Inc. (Respondent)

Unit: "all employees of CML HealthCare Inc. employed in the cities of Brantford, Cambridge and the town of Paris save and except operations coordinators, supervisors and persons above the rank of operations coordinator and supervisor and employees employed in the employer's imaging division" (38 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	39
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	0

3786-11-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. The Governing Council of the University of Toronto (Respondent)

Unit: "all Industrial Mechanics/Millwrights and Apprentice Industrial Mechanics/Millwrights in the employ of the University of Toronto working in and out of the Facilities and Services and Physical Plant Departments of the University of Toronto, save and except persons above the rank of Working Foreperson" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3787-11-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. The Governing Council of the University of Toronto (Respondent)

Unit: "all Locksmiths and Locksmith Apprentices in the employ of the University of Toronto working in and out of the Facilities and Services and Physical Plant Departments of the University of Toronto, save and except persons above the rank of Working Foreperson" (9 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters'	1

list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3820-11-R: UFCW Canada, Local 1000A (Applicant) v. LensCrafters International, Inc. (Respondent)

Unit: "all employees of LensCrafters International, Inc., located at 900 Maple Avenue, Burlington, Ontario of the Mapleview Centre, save and except the General Manager, Retail Manager, Lab Manager, and persons above the rank of Sales Supervisor." (14 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	4

3830-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Carrington Place Retirement Residence Limited (Respondent) v. Grand River Valley Health Care Employee's Union Local 305, CLAC (Intervener)

Unit: "all employees of Carrington Place Retirement Residence Limited in the town of Ancaster, save and except supervisors, persons above the rank of supervisors, registered nurses and office and clerical staff" (32 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3839-11-R: UNITE HERE Local 75 (Applicant) v. 1483197 Ontario Ltd., operating as Isabella Hotel & Suites (Respondent)

Unit: "all employees of 1483197 Ontario Ltd., operating as Isabella Hotel & Suites at 556 Sherbourne St, in the Municipality of Toronto, save and except persons above the rank of supervisor, management trainees, maintenance engineers, office and clerical staff" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	9

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

3840-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Alpha Court Community Mental Health and Addiction Services (Respondent)

Unit: "all employees of Alpha Court Non-Profit Housing Corporation in the City of Thunder Bay, save and except Supervisors and persons above the rank of Supervisor and administration staff" (29 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

3858-11-R: Ontario Nurses' Association (Applicant) v. The Regional Municipality of Durham at Hillsdale Estates (Respondent)

Unit: "all Registered Nurses and Registered Nurses with a Temporary Certificate of Registration engaged in a nursing capacity at The Regional Municipality of Durham at Hillsdale Estates in the Town of Oshawa, save and except Occupational Health Nurses, Resident Care Coordinators/Director of Nursing, Assistant Directors of Resident Care, Infection Control Practitioners and Manager of Nursing Practice and persons in or above these ranks" (25 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

3871-11-R: Graphic Communications Conference/International Brotherhood of Teamsters Local 100-M (Applicant) v. Union Strategies Inc. (Respondent)

Unit: "all employees of the Union Strategies Inc. in the Province of Ontario save and except persons exercising managerial functions or employed in a confidential capacity in matters relating to labour relations" (6 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3915-11-R: Service Employees International Union Local 1 Canada (Applicant) v. Tyndall Nursing Home Limited (Respondent)

Unit: "all employees of Tyndall Nursing Home Limited in the City of Mississauga, save and except supervisors, those above the rank of supervisor, registered nurses, MDS RAI Coordinators, wellness coordinator and office and clerical employees." (115 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	117
Number of persons who cast ballots	107
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	91
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	71
Number of ballots marked against applicant	20
Number of ballots segregated and not counted	16

Applications for Certification Dismissed Subsequent to Vote

1874-02-R: Teamsters international Union, Local 847, AFL-C10-CLC (Applicant) v. Helie Film Support Services (Respondent)

Unit: "all watchpersons of Helie Film Support Services in the Province of Ontario, save and except Managers, persons above teh rank of Manager, clerical, office, acounting staff and students employed during the summer vacation period." (125 employees in unit)

Number of names of persons on revised voters' list	239
Number of persons who cast ballots	118
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	112
Number of segregated ballots cast by persons whose names do not appear on voters' list	6

1286-09-R: Canadian Union of Public Employees (Applicant) v. Governing Council of the University of Toronto (Respondent)

Unit: "All persons employed as post-doctoral fellows by the University of Toronto in the City of Toronto and the Region of Peel save and except: 1) Persons who exercise managerial functions or who are employed in a confidential capacity in matters related to labour relations; and 2) Persons for whom any other trade union holds bargaining rights under the Labour Relations Act. 3) Postdoctoral fellows who apply for and are awarded funding from any source other than the University of Toronto including, without limiting the generality of the foregoing, NSERC, SSHRC, CIHR or foundations such as the Mellon Foundation. CLARITY NOTE: For purposes of clarity, postdoctoral fellows who receive their stipends though a hospital are not included in the bargaining unit" (551 employees in unit)

Number of names of persons on revised voters' list	209
Number of persons who cast ballots	209
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	95
Number of ballots marked against applicant	113
Number of ballots segregated and not counted	0

2490-10-R: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. V Construction & Labour Services Inc. (Respondent) v. International Union of Painters and Allied Trades, Local Union 1891 (Intervener)

Unit: "all construction labourers in the employ of V Construction and Labour Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all construction labourers in the employ of V Construction and Labour Services Inc. in all other sectors of the construction industry in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non working foreman" (6 employees in unit)

2984-10-R: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Sobeys Inc. (Respondent)

Unit: "All employees of Sobeys Inc. employed at the Sobeys Vaughan Retail Support Centre, located at 8265 Huntington Road, in the City of Woodbridge, save and except the following: a) Team Leaders; b) Shift Supervisors; c) persons above the rank of Shift Supervisor; d) contract workers employed and/or provided by third-party agencies, including, but not limited to, drivers, cleaners, "lumpers", temporary employees, and casual employees; e) Inventory Control Department employees; f) Procurement Department employees; g) Maintenance Department employees; h) Information Technology Department employees; i) Quality Control employees; j) Quality Assurance employees; k) all office and clerical staff, and; l) employees already represented by another trade union as of December 8, 2010." (100 employees in unit)

Number of names of persons on revised voters' list	152
Number of persons who cast ballots	132
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	132
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	35
Number of ballots marked against applicant	97
Number of ballots segregated and not counted	0

2200-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. 531584 Ontario LTD (Respondent)

Unit #1: "all dependant contractors/employees of 531584 Ontario LTD working in and out of Lester B Pearson International Airport in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, dispatchers, multi plate/multi car owners or lessees, office and clerical employees." (200 employees in unit)(200 employees in unit)

Number of names of persons on revised voters' list	202
Number of persons who cast ballots	202
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	227
Number of segregated ballots cast by persons whose names do not appear on voters' list	22
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	152
Number of ballots marked against applicant	49

2908-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Huron Central Railway Inc. (Respondent)

Unit: "all employees of the responding party on its Huron Central Railroad, save and except office, sales and clerical staff, and save and except supervisors and persons above the rank of supervisor." (20 employees in unit)

2909-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Huron Central Railway Inc. (Respondent)

Unit: "all employees of the responding party working on its Huron Central Railroad, save and except office, sales and clerical staff, and save and except supervisors and persons above the rank of supervisor." (12 employees in unit)

3430-11-R: Ontario Workers' Union (Applicant) v. Caressant Care Nursing and Retirement HomesLtd. Marmora Retirement Home (Respondent) v. Service Employees International Union Local 1 Canada (Intervener)

Unit: "all employees of Caressant Care Nursing and Retirement Homes Ltd. employed at its Retirement Home in the Village of Marmora, Ontario, save and except supervisors, persons above the rank of supervisor, professional medical staff, registered and graduate nurses, office and clerical staff." (19 employees in unit)

3610-11-R: Retail, Wholesale and Department Store Union District Council of the United Food and Commercial Workers International Union (Applicant) v. Service D'Entretien Clean International Inc. (Respondent)

Unit: "all employees of the Responding Party working in and out of the City of Cornwall, Ontario save and except supervisors and persons above the rank of supervisor, office, clerical and sales staff." (54 employees in unit)

Number of names of persons on revised voters' list	49
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25

Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	0

3732-11-R: Ontario Public Service Employees Union (Applicant) v. Golden Years Nursing Home (Cambridge) Inc. (Respondent)

Unit: "all employees of Golden Years Nursing Home and Assisted Living Centre in the Regional Municipality of Waterloo save and except supervisors and persons above the rank of supervisor" (132 employees in unit)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	19
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	9

3806-11-R: Teamsters Local Union No. 879 (Applicant) v. Richardson Foods, a Division of Heinz Canada (Respondent)

Unit: "all employees of Richardson Foods, a Division of Heinz Canada, working at 25 South Service Road, St. Mary's, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical, sales staff and temporary employees." (212 employees in unit)

Number of names of persons on revised voters' list	212
Number of persons who cast ballots	199
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	169
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	15
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	136
Number of ballots segregated and not counted	30

3807-11-R: Canadian Union of Public Employees (Applicant) v. Huron Perth Catholic District School Board (Respondent)

Unit: "all Custodial Staff employed by the Huron Perth Catholic District School Board and/or Huron-Perth District Catholic School Board, save and accept supervisors and persons above the rank of supervisor, and employees already represented by a trade union" (45 employees in unit)

Number of names of persons on revised voters' list	66
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters'	0

list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	26
Number of ballots segregated and not counted	0

Applications for Certification Withdrawn

0660-09-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. A. Potvin Construction Limited (Respondent)

0294-10-R: Sheet Metal Workers' International Association, Local 51 (Applicant) v. Giancola Aluminum Contractors Inc. (Respondent) v. Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Intervener)

2317-10-R: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. D. Grant & Sons Limited (Respondent)

0067-11-R: Ontario Council of Construction Unions (Applicant) v. Sanmik Developments Inc. (Respondent)

0427-11-R: Ontario Council of Construction Unions (Applicant) v. V.H.L. Developments Inc. and, V.H.L. Developments (Markham Place) Inc. (Respondent)

1456-11-R: National Organized Workers (Applicant) v. ABC Group Product Development (Respondent)

1500-11-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Harhay Construction Management Ltd. and, 90 Broadview Inc. and, 25 Stafford Inc. (Respondent)

1641-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jay Patry Enterprises Inc. (Respondent)

2673-11-R: Niagara Health Care & Service Workers Union Local 302, affiliated with the Christian Labour Association of Canada (Applicant) v. Aramark Canada Ltd. (Respondent) v. Labourers' International Union of North America and Labourers' International Union of North America, Local 837 (Intervener)

2905-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Huron Central Railway Inc. (Respondent)

3615-11-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Romco Industries Inc. (Respondent)

3620-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. Front Construction Industries Inc. (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 494 (Intervener)

3783-11-R: Canadian Union of Public Employees (Applicant) v. The Durham District School Board (Respondent)

3912-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. Orbit Excavating and Sanitation Services Ltd. (Respondent)

4009-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. Amico Infrastructures Inc. (Respondent)

APPLICATION FOR DECLARATION OF RELATED EMPLOYER

2091-03-R: United Food and Commercial Workers Union, Local 175 (Applicant) v. MGI Packers Inc., Maple Freezers Limited, Continental Trading Company Limited, Continental Meat Packers Inc., Continental Trading Company Inc., Maple Freezers Inc., Burnstar Financial Holdings Inc., Henry Muller, 1553602 Ontario Limited, Richard Clare, Gencor Foods Inc., 1553603 Ontario Limited, 2258775 Ontario Inc. cob as Arnold Meat Packers (Respondent) *(Terminated)*

2886-09-R: Communications, Energy and Paperworkers Union of Canada, Local 672 (Applicant) v. Dow Chemical Canada Inc. and, TransAlta Generation Partnership (Respondent) *(Withdrawn)*

0652-10-R: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. JMC Building Developments Ltd., Flynn Canada Ltd. (Respondent) *(Dismissed)*

1736-10-R: Labourers' International Union of North America, Local 506 (Applicant) v. Choice Environmental Services Inc. c.o.b. as Choice Environmental and, Tri-Phase Environmental Inc., Alphonso Casillas in his Personal Capacity and c.o.b. as Star Abatement (Respondent) *(Withdrawn)*

1830-11-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Harhay Construction Management Ltd. and, 90 Broadview Inc. and, 25 Stafford Inc. (Respondent) *(Withdrawn)*

1920-11-R: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Active Insulation, Orbacon Services Inc. (Respondent) *(Withdrawn)*

2002-11-R: Construction And Allied Workers, Local Union 607 (Applicant) v. Peter Panontin & Sons Ltd., Gasparotto/Panontin Construction Limited, Panontin Construction Limited and, MMA Products Canada Inc. (Respondent) *(Withdrawn)*

2577-11-R: IBEW Electrical Power Council of Ontario IBEW Construction Council of Ontario (Applicant) v. Comstock Canada Limited and/or, E.S. Fox Limited and/or, Jingoli Canada Inc. and/or, Joseph Jingoli & Son, Inc. and/or, CFJ Nuclear Contractors Ltd. (Respondent) *(Withdrawn)*

3219-11-R: The Bricklayers, Masons Independent Union of Canada, Local 1 and the Universal Workers Union, Labourers' International Union of North America Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. All Wall Masons Ltd. and/or, GOE Masonry Ltd. and/or, Definition Masonry Inc. (Respondent) *(Granted)*

3420-11-R: Carpenters' District Council of Ontario, Local 93 (Applicant) v. Presto Construction Inc. and, 7115725 Canada Inc. (Respondent) *(Withdrawn)*

3846-11-R: Labourers' International Union of North America, Local 506 (Applicant) v. Frank Lill & Son (Canada) Inc., Difazio North Constructors Inc., Lill & Difazio Constructors Canada Corporation, Lill & Difazio Constructors LLC, Frank Lill & Son, Inc. and, Difazio Power & Electric, LLC (Respondent) *(Withdrawn)*

SALE OF A BUSINESS

2091-03-R: United Food and Commercial Workers Union, Local 175 (Applicant) v. MGI Packers Inc., Maple Freezers Limited, Continental Trading Company Limited, Continental Meat Packers Inc., Continental Trading Company Inc., Maple Freezers Inc., Burnstar Financial Holdings Inc., Henry Muller, 1553602 Ontario Limited, Richard Clare, Gencor Foods Inc., 1553603 Ontario Limited, 2258775 Ontario Inc. cob as Arnold Meat Packers (Respondent) *(Terminated)*

2886-09-R: Communications, Energy and Paperworkers Union of Canada, Local 672 (Applicant) v. Dow Chemical Canada Inc. and, TransAlta Generation Partnership (Respondent) *(Withdrawn)*

0652-10-R: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. JMC Building Developments Ltd., Flynn Canada Ltd. (Respondent) *(Dismissed)*

1736-10-R: Labourers' International Union of North America, Local 506 (Applicant) v. Choice Environmental Services Inc. c.o.b. as Choice Environmental and, Tri-Phase Environmental Inc., Alphonso Casillas in his Personal Capacity and c.o.b. as Star Abatement (Respondent) *(Withdrawn)*

1830-11-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Harhay Construction Management Ltd. and, 90 Broadview Inc. and, 25 Stafford Inc. (Respondent) *(Withdrawn)*

1920-11-R: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Active Insulation, Orbacon Services Inc. (Respondent) *(Withdrawn)*

2002-11-R: Construction And Allied Workers, Local Union 607 (Applicant) v. Peter Panontin & Sons Ltd., Gasparotto/Panontin Construction Limited, Panontin Construction Limited and, MMA Products Canada Inc. (Respondent) *(Withdrawn)*

2577-11-R: IBEW Electrical Power Council of Ontario IBEW Construction Council of Ontario (Applicant) v. Comstock Canada Limited and/or, E.S. Fox Limited and/or, Jingoli Canada Inc. and/or, Joseph Jingoli & Son, Inc. and/or, CFJ Nuclear Contractors Ltd. (Respondent) *(Withdrawn)*

3219-11-R: The Bricklayers, Masons Independent Union of Canada, Local 1 and the Universal Workers Union, Labourers' International Union of North America Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. All Wall Masons Ltd. and/or, GOE Masonry Ltd. and/or, Definition Masonry Inc. (Respondent) *(Granted)*

3420-11-R: Carpenters' District Council of Ontario, Local 93 (Applicant) v. Presto Construction Inc. and, 7115725 Canada Inc. (Respondent) *(Withdrawn)*

3846-11-R: Labourers' International Union of North America, Local 506 (Applicant) v. Frank Lill & Son (Canada) Inc., Difazio North Constructors Inc., Lill & Difazio Constructors Canada Corporation, Lill & Difazio Constructors LLC, Frank Lill & Son, Inc. and, Difazio Power & Electric, LLC (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0387-10-R: Lloyd Grant &, Salvador Melo (Applicant) v. The International Union of Painters and Allied Trades District 46 Local 1891 (Respondent) v. Manel Contracting Ltd. (Intervener) *(Dismissed)*

Unit: "The Employer recognizes the Union as the sole and exclusive bargaining agent for all its employees engaged in the work referred to in (i) Appendix A attached hereto, in all sectors of the construction industry in the Province of Ontario and engaged in any such work of a non- construction nature in the said Province, save and except any work covered by the Collective Agreement between the Ontario Council of the International Union of Painters and Allied Trades and The Electrical Power Systems Construction Association and, (ii) Appendix B attached hereto, the Employer recognizes the Union as the sole and exclusive bargaining agent for its employees engaged in the work outlined in the Scope and Trade Jurisdiction of Work of the Agreement in the Province of Ontario, save and except any work covered by the Collective Agreement between the Ontario Council of the International Union of Painters and Allied Trades and The Electrical Power Systems Construction Association. (iii) Appendix C attached hereto, in all sectors of the construction industry in the jurisdictional territory referred to in Appendix C and engaged in any such work of a non-construction nature in the said territory, save and except any work covered by the Collective Agreement between the Ontario Council of the International Union of Painters and Allied Trades and The Electrical Power Systems Construction Association." (2 employees in unit)

1110-10-R: Lifetime Homes (Applicant) v. Central Ontario Regional Council of Carpenters, Drywall and Allied Workers United Brotherhood of Carpenters and Joiners of America (Respondent) *(Withdrawn)*

3031-11-R: Scott Andrew Zwaniga (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) v. Ontario Lottery and Gaming Corporation ("OLG") (Intervener) *(Terminated)*

Unit: "all Table Games Inspectors (formerly Floor Supervisors) and Dual Rate Pit Managers, when performing the duties of Table Games Inspectors, of OLG Casino Brantford, in the City of Brantford" (59 employees in unit)

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	56
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	56
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	22
Number of ballots marked against respondent	34
Number of ballots segregated and not counted	0

3801-11-R: Michelle Merritt (Applicant) v. Southwestern Ontario Health Care and Service Workers, Local 303, Affiliated with Christian Labour Association of Canada (Respondent) v. Delta Chi Beta Early Childhood Centre (Windsor) Inc. (Intervener) *(Granted)*

Unit: "all employees of Delta Chi Beta Early Childhood Education Centre (Windsor) Inc. at 1385 Quellette Avenue, in the City of Windsor, save and except Manager, Administrative Assistant and persons above the rank of Administrative Assistant" (16 employees in unit)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	9
Number of ballots segregated and not counted	1

3934-11-R: Robert Barrett and Norair Kirkorian (Applicant) v. Teamsters Local 419 (Respondent) v. Witron Canada Corporation (Intervener) *(Dismissed)*

Unit: "Witron Canada Corporation recognizes the Union as the sole bargaining agent for all employees working at or out of 8265 Huntington Road, Vaughn, Ontario, save and except Team Leaders, Supervisors, and those above the rank of Team Leader, or Supervisor, office, clerical and sales staff, IT and safety" (56 employees in unit)

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	53
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	39
Number of ballots marked against respondent	14
Number of ballots segregated and not counted	0

3961-11-R: Bruno Charron (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 414 (Respondent) v. Metro Lincoln Heights Store 254 (Intervener) *(Withdrawn)*

Unit: "all employees of Loeb Canada Inc. c.o.b. as Loeb Lincoln Heights, in the City of Ottawa, save and except team leaders, those above the rank of team leaders, office, clerical staff, receivers and management trainee (to a maximum of one)" (88 employees in unit)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

0766-09-U: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. A. Potvin Construction Limited and, Minto Developments Inc. (Respondent) *(Withdrawn)*

1865-10-U: Bernardino Ferreira, Joao Batista Alves, Nelson Melo, Robert Tamburini, Pat Scaduto, Jose Gomes, Enrique D'Silva, Angelo Sampogna, Ozias Pinto, Joe Ferreira, Marcello DiGiovanni and, Jose De Sousa (Applicant) v. Durval Teceira, Daniel Avero, Jamie Melo, Gaetano Strazzanti and Micheal O'Brein (Respondent) *(Withdrawn)*

2343-10-U: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. D. Grant & Sons Limited (Respondent) *(Withdrawn)*

2872-10-U; 3526-10-U: Labourers International Union of North America, Ontario Provincial District Council (Applicant) v. V Construction & Labour Services Inc. (Respondent) v. International Union of Painters and Allied Trades, Local Union 1891 (Intervener) *(Granted)*; V Construction & Labour Services Inc. (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council (Respondent) *(Dismissed)*

3102-10-U: Dr. W. Larry Grovum (Applicant) v. The University of Guelph Faculty Association (UGFA) and, The Canadian Association of University Teachers (CAUT) (Respondent) v. University of Guelph (Intervener) *(Dismissed)*

3961-10-U: Adelina Maglines, Icyline Langley, Dominga Cerrudo, Josefina Corbillon, Icha King, Roseminda Columbino, Elizabeth Estomo, Halima Warar, Imelda Orpiada, Almaz Kassa, Haymonot Damte, Subrata Gupta, Eutewma Maulit, Ewber Yonic, Shahinaz Elassal, Juanita Sotto, Editha Milca, Edna Dela Isla, John Bawtista, Rizalina Uncuano, Patria Bernardino, Gloria Salting, Sofia Kent, Aida Manuel, Lolita Corpuz, Hassan, Eugene Yaldez, Vicente Atvan, Amsale Gerberzitone, Nicolas Tuanas and Luisita Barete (Applicant) v. SEIU Local 2, Brewery General and Professional Workers Union (Respondent) v. Richtree Market Restaurant Inc. (Intervener) *(Dismissed)*

1157-11-U: Laura Reid (Applicant) v. Canadian Auto Workers Union, Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

1327-11-U: Mario Carreiro (Applicant) v. Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Respondent) *(Withdrawn)*

1462-11-U: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. The Dalton Company Limited (Respondent) *(Withdrawn)*

1475-11-U: Durval Terceira, Jamie Melo, Michael O'Brien, Gaetano Strazzanti and Cesar Daniel Avero (Applicant) v. Labourers' International Union of North America and, Universal Workers Union - Labourers' International Union of North America Local 183 (Respondent) v. Ronald A. Pink, Q.C. (Intervener) *(Dismissed)*

1516-11-U: National Organized Workers (Applicant) v. ABC Group Product Development (Respondent) *(Withdrawn)*

1692-11-U: National Organized Workers (Applicant) v. ABC Group Product Development (Respondent) *(Withdrawn)*

1862-11-U: Gary Rutley (Applicant) v. Ontario Public Service Employees Union Local 417 (Respondent) *(Terminated)*

1870-11-U: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jay Patry Enterprises Inc. (Respondent) *(Withdrawn)*

2046-11-U: Jean Cooper (Applicant) v. YWCA Toronto (Respondent) v. Canadian Union of Public Employees and its Local 2189 (Intervener) *(Withdrawn)*

2181-11-U: Ralston Walker (Applicant) v. United Food & Commercial Workers Canada, Local 175 & 633 (Respondent) v. Sobeys Inc. (Intervener) *(Dismissed)*

2231-11-U: Magda Abdelshafei (Applicant) v. Canadian Union of Public Employees and its Local 2199 (Respondent) *(Dismissed)*

2241-11-U: Kathy Flood (Applicant) v. Grand River Valley Health Care Employees Union, Local 305 Affiliated with the Christian Labour Association of Canada (Respondent) *(Withdrawn)*

2445-11-U: United Brotherhood of Retail, Food, Industrial and Service Trades International (Applicant) v. Avion Motel Limited and/or Howard Johnson Express Inn and Suites (Respondent) *(Withdrawn)*

2508-11-U: Sri Andal Baskaran (Applicant) v. CAW Local 414 of National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Respondent) v. Compass Group Canada (Beaver) Ltd. at Extendicare Mississauga (Intervener) *(Dismissed)*

2509-11-U: Carol Hall (Applicant) v. Canadian Union of Public Employees and its Local 973 (Respondent) v. The City of Guelph (Intervener) *(Dismissed)*

2535-11-U: Service Employees International Union, Local 1 Canada (Applicant) v. Specialty Care Woodspark Inc. and, Ontario Workers' Union (Respondent) *(Withdrawn)*

2638-11-U: Communications, Energy and Paperworkers' Union of Canada - CEP, Local CULR-1 (Applicant) v. Canadian Labour Congress (Respondent) *(Withdrawn)*

2668-11-U: Canadian Office and Professional Employees Union, Local 225 (Applicant) v. Canadian Labour Congress (Respondent) *(Withdrawn)*

2753-11-U: Daniel Couchie (Applicant) v. Casino Rama Services Inc. (Respondent) *(Withdrawn)* 2831-11-U: Canadian Office and Professional Employees Union, Local 343 (Applicant) v. Hamilton Teachers' Credit Union Ltd. (Respondent) *(Withdrawn)*

3020-11-U: Gurdeep Nagra (Applicant) v. United Steel Workers Union (Respondent) *(Dismissed)*

3021-11-U: Service Employees International Union Local 1 Canada (Applicant) v. West Oak Village (Respondent) *(Withdrawn)*

3160-11-U: Matthew Finn (Applicant) v. Quality Control Council of Canada (Respondent) *(Withdrawn)*

3176-11-U: Dahir Sabtow Mohamed (Applicant) v. Amalgamated Transit Union, Local 279 (Respondent) *(Withdrawn)*

3205-11-U: United Food & Commercial Workers, Local 206 (Applicant) v. Tesser Group Inc. C.O.B. AS Swiss Chalet Restaurant #1312 346 Bloor St. West, Toronto, Ontario (Respondent) *(Withdrawn)*

3218-11-U: Mark Harris (Applicant) v. Carpenters' Local Union 27 (Respondent) *(Dismissed)*

3231-11-U: International Union of Operating Engineers, Local 793 (Applicant) v. Mantor Landscape Ltd. (Respondent) *(Withdrawn)*

3254-11-U: Carole Morissette (Applicant) v. Ontario Public Service Employees Union (Respondent) v. The Crown in Right of Ontario as represnted by the Ministry of Revenue (Intervener) *(Dismissed)*

3274-11-U: Labourers' International Union of North America, Local 506 (Applicant) v. Envirocon Abatements Ltd. (Respondent) *(Withdrawn)*

3279-11-U: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Superior Boiler Works and Welding Limited (Respondent) *(Withdrawn)*

3398-11-U: International Association of Machinists & Aerospace Workers, Local 1120 (Applicant) v. Dominion Motors (Thunder Bay) Ltd. (Respondent) *(Withdrawn)*

3434-11-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1799712 Ontario Inc. o/a Truline Electrical Services (Respondent) *(Granted)*

3494-11-U: United Food and Commercial Workers Canada, Local 1000A (Applicant) v. Aspect Retail Logistics (Respondent) *(Withdrawn)*

3541-11-U: Denise Auclair (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union (CAW Canada) and its Local No. 27 (Respondent) v. Autoneum Canada Ltd. (Intervener) *(Dismissed)*

3621-11-U: Huntley Thompson (Applicant) v. Communications, Energy, Local 333 (Respondent) v. ICS Courier (Intervener) *(Terminated)*

3658-11-U: Joan E. Vincze (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) v. Craiglee Nursing Home (Intervener) *(Withdrawn)*

3659-11-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Romco Industries Inc. (Respondent) *(Withdrawn)*

3692-11-U: Healthcare, Office and Professional Employees Union, Local 2220, UBCJA (Applicant) v. Specialty Care Granite Ridge, and Labourers' International Union of North America, Local 1110 (Respondent) *(Withdrawn)*

3704-11-U: Fred Chetman (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Dismissed)*

3740-11-U: Gary Campbell (Applicant) v. United Food and Commercial Workers Union Local 333 (Respondent) *(Dismissed)*

3853-11-U: Schneider Employees' Association (Applicant) v. Maple Leaf Consumer Foods Ayr Ontario (Respondent) *(Dismissed)*

3861-11-U: Ontario Public Service Employees Union (Applicant) v. CML HealthCare Inc. (Respondent) *(Withdrawn)*

3918-11-U: Service Employees International Union, Local 1 Canada (Applicant) v. Denham Corporation Ltd. o/a Tyndall Estates (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

3593-11-M: Dominion Motors (Thunder Bay) Ltd. (Applicant) v. International Association of Machinists & Aerospace Workers, Thunder Bay Lodge 1120 (Respondent) *(Withdrawn)*

3749-11-M: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Romco Industries Inc. (Respondent) *(Withdrawn)*

APPLICATIONS FOR CONSENT TO PROSECUTE

3561-11-U: International Brotherhood of Electrical Workers, Local 303 (Applicant) v. 1526859 Ontario Limited (Respondent) *(Granted)*

JURISDICTIONAL DISPUTES

1156-10-JD: International Union of Painters and Allied Trades Ontario Provincial Council and International Union of Painters and Allied Trades, Local 114 (Applicant) v. Ellis-Don Limited, Westmount Storefront Systems, International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721, Iron Workers District Council of Ontario (Respondent) *(Withdrawn)*

3545-11-JD: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Brick and Allied Craft Union of Canada, Local 12, Brick and Allied Craft Union of Canada, North Wood Carpet & Tile Company Ltd. (Respondent) v. The Resilient Flooring Contractors Association of Ontario (Intervener) *(Terminated)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

1804-10-OH: Canadian Union of Public Employees, Local 79,, Bryan McGuire, and, Lance Parsons (Applicant) v. The City of Toronto (Respondent) *(Withdrawn)*

3743-10-OH: Winston H. Gregory (Applicant) v. Estée Lauder Cosmetics Limited (Respondent) *(Dismissed)*

2948-11-OH: Ken Schaffner (Applicant) v. Motel 6 Whitby (Respondent) *(Dismissed)*

3369-11-OH: Anne Marie Batten (Applicant) v. Street Health Community Nursing Foundation ("Street Health") (Respondent) *(Withdrawn)*

3400-11-OH: Grace Cabral (Applicant) v. Aldershot Greenhouse Ltd. (Respondent) *(Dismissed)*

3570-11-OH: Luc Vincent (Applicant) v. SteriMax Inc. (Respondent) *(Withdrawn)*

3588-11-OH: Darren R. Reed (Applicant) v. Brian Abernot Algoma Dairy Distributor (Respondent) *(Dismissed)*

3703-11-OH: Dawn King (Applicant) v. Anishinaabe Abinoojii Family Services (Respondent) *(Dismissed)*

3773-11-OH: Lee-Anne Moore (Applicant) v. Anishinaabe Abinoojii Family Services (Respondent) *(Dismissed)*

3836-11-OH: Nick Miller (Applicant) v. Waste Management (Respondent) *(Withdrawn)*

3974-11-OH: Kelly Brennan (Applicant) v. Quatro Industries Ltd. (Respondent) *(Terminated)*

CONSTRUCTION INDUSTRY GRIEVANCES

3278-09-G; 3570-09-G; 3590-09-G: International Brotherhood of Electrical Workers, Local 402 (Applicant) v. Tom Jones & Sons Limited, Tom Jones Corporation, Tom Jones Construction Inc. (Respondent) v. The Attorney General of Ontario, Lisgar Construction Co., General Contractors, Harbridge & Cross Limited, Eastern Construction Company Limited, Barclay Construction Limited, James Kemp Construction Limited, Trist Construction Limited, Van Horne Construction Limited, Labourers' International Union of North America, Ontario Provincial District Council, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario (Intervener); International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. EllisDon Corporation and Ellis-Don Ltd. (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers and Iron Workers District Council of Ontario, The Attorney General of Ontario, Lisgar Construction Co., General Contractors, Harbridge & Cross Limited, Eastern Construction Company Limited, Barclay Construction Limited, James Kemp Construction Limited, Trist Construction Limited, Van Horne Construction Limited (Intervener); International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Vanbots Limited, Vanbots Construction Corporation, and Vanbots, a Division of Carillion Construction Inc. (Respondent) v. The Attorney General of Ontario, Labourers' International Union of North America, Ontario Provincial District Council, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Iron Workers District Council of Ontario, Lisgar Construction Co., General Contractors, Harbridge & Cross Limited, Eastern Construction Company Limited, Barclay Construction Limited, James Kemp Construction Limited, Trist Construction Limited, Van Horne Construction Limited (Intervener) *(Dismissed)*

3281-09-G: International Union of Operating Engineers, Local 793 (Applicant) v. Prima Crane Ltd. (Respondent) *(Terminated)*

0851-10-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. EllisDon Corporation (Respondent) v. Ontario Council of the International Union of Painters and Allied Trades and the International Union of Painters and Allied Trades, Local 114 (Intervener) *(Withdrawn)*

1764-10-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Dom-Meridian Construction Ltd./ D.I. Construction Co. Inc. (Respondent) *(Withdrawn)*

3278-10-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Hydro One Inc. (Respondent) *(Dismissed)*

1193-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1371103 Ontario Inc. o/a Pro Group (Respondent) *(Granted)*

1689-11-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Somerlyn Trim & Doors Inc. (Respondent) *(Withdrawn)*

1963-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Mammoet Canada Inc. (Respondent) *(Withdrawn)*

2212-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping and Excavation Ltd. (Respondent) *(Terminated)*

2697-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Lake Excavating & Contracting Inc. (Respondent) *(Granted)*

2861-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Mammoet Crane Inc. (Respondent) *(Withdrawn)*

2965-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and Iron Workers District Council of Ontario and its Local 736 (Applicant) v. Ironclad Metals Inc. (Respondent) *(Granted)*

3041-11-G: International Brotherhood of Electrical Workers, Local 303 (Applicant) v. 1526859 Ontario Limited (Respondent) *(Granted)*

3047-11-G: Carpenters District Council of Ontario, Local 93 (Applicant) v. Presto Construction Inc. (Respondent) *(Withdrawn)*

3119-11-G: Labourers' International Union of North America, Ontario Provincial District Council with its affiliated Local Union, Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. PNR Railworks Inc. (Respondent) *(Dismissed)*

3216-11-G: Labourers' International Union of North America, Local 1059 and Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. CFJ Nuclear Contractors Ltd. (Respondent) *(Terminated)*

3250-11-G: Brick and Allied Craft Union of Canada, Local 12 and Brick and Allied Craft Union of Canada (Applicant) v. North Wood Carpet & Title Company Ltd. (Respondent) *(Withdrawn)*

3272-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Two Star Carpentry Inc. (Respondent) *(Withdrawn)*

3275-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. Envirocon Abatements Ltd. (Respondent) *(Withdrawn)*

3290-11-G: Sheet Metal Workers' International Association, Local 397 (Applicant) v. Cardinal Roofing & Sheet Metal Inc. (Respondent) *(Withdrawn)*

3421-11-G: Carpenters' District Council of Ontario, Local 93 (Applicant) v. Presto Construction Inc. and, 7115725 Canada Inc. (Respondent) *(Withdrawn)*

3476-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 759 (Applicant) v. NCL Industrial Corp. (Respondent) *(Granted)*

3569-11-G: International Union of Elevator Constructors, Local 90 (Applicant) v. Kone Inc. (Respondent) *(Withdrawn)*

3611-11-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Siding Adiv Ltd. (Respondent) *(Withdrawn)*

3639-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. GTA Concrete Pumps Inc. (Respondent) *(Granted)*

3661-11-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

3728-11-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. MIKEN CORPORATION c.o.b. as Finlandia Sauna and Steam (Respondent) *(Terminated)*

3733-11-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Laser Vac Vacuum Excavation & Construction Co. Ltd. (Respondent) *(Withdrawn)*

3742-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Metro Painters (2004) Limited (Respondent) *(Granted)*

3780-11-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. C & M Electric Ltd. (Respondent) *(Withdrawn)*

3788-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486, (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds" (Applicant) v. Tim James Soulliere c.o.b. as Architectural Door Services (Respondent) *(Endorsed Settlement)*

3789-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Haefen Inc./Chris R. Wilkins and Randy M. Pindur c.o.b. as Haefen Restorations (Respondent) *(Granted)*

3811-11-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ashby Contracting Ltd. (Respondent) v. Residential Tile Contractors' Association (Intervener) *(Dismissed)*

3824-11-G: Labourers' International Union of North America, Local 625 (Applicant) v. Jones Group Ltd. (Respondent) *(Granted)*

3826-11-G: Labourers' International Union of North America, Local 625 (Applicant) v. Jones Group Ltd. (Respondent) *(Granted)*

3896-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. D & N Demolition (Respondent) *(Granted)*

3905-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Mack Mechanical Solutions Inc. (Respondent) *(Granted)*

3919-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Dae Contractors Inc. (Respondent) *(Granted)*

3933-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Richview Electric Inc. (Respondent) *(Granted)*

3937-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Maplecon Group Inc. (Respondent) *(Granted)*

3939-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Eltec Group Inc. (Respondent) *(Withdrawn)*

3940-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Eltec Group Inc. (Respondent) *(Withdrawn)*

3942-11-G: Masonry Council of Unions Toronto and Vicinity, Bricklayers, Masons' Independent Union of Canada Local 1, and, Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Pillar General Contracting Inc. (Respondent) *(Withdrawn)*

3968-11-G: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Comstock Canada Inc. (Respondent) *(Withdrawn)*

3996-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Long Valley Forming Limited (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

1444-10-ES: Deena Schiller (Applicant) v. P & L Corporation Ltd. and, Director of Employment Standards (Respondent) *(Granted)*

1456-10-ES: Barnet Digital Inc. (Applicant) v. Greg Erhirhie and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1548-10-ES: Nickinini Matthew (Applicant) v. MJK Holdings Inc. o/a Cedar Beach Grill and, Director of Employment Standards (Respondent) *(Terminated)*

2397-10-ES: 5216959 Manitoba Ltd. (Applicant) v. Keith D. Goldfeldt and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2956-10-ES: Vinci Park Services Canada Inc. (Applicant) v. Tewabech Amare,, Canada Auto Parks and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3216-10-ES: P & P Sodh Inc. Operating as Quiznos Sub (Applicant) v. Shauna Kavanagh and, Director of Employment Standards (Respondent) *(Granted)*

3254-10-ES: 1068434 o/a Kingsley Court (Applicant) v. Colleen Kierans and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3273-10-ES: J.D. Mason Industries Inc. o/a Professional Answering Service of Sarnia (Applicant) v. Tina Bishop and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3323-10-ES: John Skwarek (Applicant) v. Repower Automotive Services Inc. and, Director of Employment Standards (Respondent) *(Granted)*

3651-10-ES: 538037 Ontario Limited o/a Lion's Head Tavern (Applicant) v. Vedrana Bejonga and, Director of Employment Standards (Respondent) *(Granted)*

3687-10-ES: Mohammad Farhan Chaudhary (Applicant) v. Transglobe Property Management Services Ltd., and Director of Employment Standards (Respondent) *(Granted)*

3862-10-ES: David J. Olevson (Applicant) v. Aisling Mary Lanigan o/a Student Painting Enterprises and, Director of Employment Standards (Respondent) *(Dismissed)*

3886-10-ES; 3887-10-ES; 3888-10-ES: Jonathan Essa, a Director of 1670672 Ontario Limited o/a Elements Restaurant & Lounge (Applicant) v. Craig Napper and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3909-10-ES: Gemma Communications Ltd. (Applicant) v. Mitsubishu Thompson and, Director of Employment Standards (Respondent) *(Withdrawn)*

4055-10-ES: Abera Mensur (Applicant) v. Vinci Parc (Canada) Inc.,, DomePark Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

4169-10-ES: Aaron Ensell (Applicant) v. Mary Ann Marko o/a Geothermal Canada and, Director of Employment Standards (Respondent) *(Dismissed)*

4317-10-ES: LK Protection Inc. (Applicant) v. Roxann Williams, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0088-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Gale Sandiford and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0089-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Kenneth Wiens and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0091-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Cheryl Hines and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0094-11-ES: Corporate Furniture Group Inc. (Applicant) v. Mark Morin, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0120-11-ES: Catherine Muir (Applicant) v. 1291244 Ontario Limited o/a Burton Ave. Driver & Vehicle License Office and, Director of Employment Standards (Respondent) *(Granted)*

0756-11-ES: Losani Homes (1998) Ltd. (Applicant) v. Michael Kellil and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0877-11-ES: Dignity Healthcare Inc. (Applicant) v. Chloe Taylor and, Director of Employment Standards (Respondent) *(Dismissed)*

0898-11-ES: Kevin Windmuller, a director of Hair Studio 101 Inc. (Applicant) v. Tracy Mottram and, Director of Employment Standards (Respondent) *(Dismissed)*

0920-11-ES: The Forever Roof Inc. (Applicant) v. David Carroll and, Director of Employment Standards (Respondent) *(Granted)*

1000-11-ES: Sharon Barney a Director of Rand General Contractors Inc. o/a Rand General Contractors (Applicant) v. Ricky Miotto, Roberto Miotto, Director of Employment Standards (Respondent) *(Terminated)*

1124-11-ES: Patricia Gabriele-Frasca (Applicant) v. Cianfarani Travel Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1211-11-ES: Jessalee Anne Espineda (Applicant) v. Battikha Security Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1255-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Barbara-Ann Farough and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1256-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Susan J. Reimer and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1258-11-ES: Gordon J. Pronk, director of Pronk & Associates Inc. (Applicant) v. Trina Brady, Mark Cruxton, Lereece Daniels, Andrew Garcia, Naomi Ishiguro, Christopher Kowalczyk, Ann Ludbrook, Paul Meyers, Robin Mitchell, Roy Mitchell, Owen Williams and, Director of Employment Standards (Respondent) *(Granted)*

1263-11-ES: 738457 Ontario Inc. o/a Industrial Systems (Applicant) v. Barry Sargalis, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1274-11-ES: Enchante Perfumes & Cosmetics Ltd. (Applicant) v. Stella Algoreel and, Director of Employment Standards (Respondent) *(Dismissed)*

1295-11-ES: Marineland of Canada Inc. (Applicant) v. Jacqueline Embleton and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1378-11-ES: Asian Wok Restaurant Inc. (Applicant) v. Ye Li and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1379-11-ES: Deer Park Est. Inc. (Applicant) v. Brian Nicholson, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1418-11-ES: Dong Wei Bai (Applicant) v. Leivaire Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1448-11-ES: 2264099 Ontario Inc. Operating as London South Gold's Gym (Applicant) v. David P. Golinski and, Director of Employment Standards (Respondent) *(Dismissed)*

1614-11-ES: 2009915 Ontario Inc. o/a Orchard Beach Lakefront Bar & Grill (Applicant) v. Bradley Dickson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1619-11-ES: The Pavilion Sports Clubs Inc. (Applicant) v. Marielle Harush and, Director of Employment Standards (Respondent) *(Dismissed)*

1725-11-ES: 1122010 Ontario Inc. o/a Beacon Diner (Applicant) v. Nancy May L. Hagerty and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1730-11-ES: R. O. M. Contractors Inc. o/a Ross Clair Contractors (Applicant) v. Adrian Margan, Director of Employment Standards (Respondent) *(Withdrawn)*

1769-11-ES: Gib & Kim's Grocery Ltd. operating as John's Delicatessen and Meat Market (Applicant) v. Gladys Turner and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1814-11-ES: Vanderwal Homes & Commercial Group (Applicant) v. Christopher Boothe and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1815-11-ES: Vanderwal Homes & Commercial Group (Applicant) v. Brent Snetselaar-Ewen and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1845-11-ES: Shaun (Son) NXS Nguyen (Applicant) v. Deer Park Est. Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1889-11-ES: Jennifer Polak (Applicant) v. Paul Timothy Baker o/a Student Media and, Director of Employment Standards (Respondent) *(Granted)*

1949-11-ES: Mealea Mey (Applicant) v. Nature Fresh Farms Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2081-11-ES: Amir Ahmad Omar (Applicant) v. 1656542 Ontario Inc. o/a Trum-Broddeen Janitorial Services and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2137-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Robert W.D. Johnston and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2138-11-ES: Sorensen Greenhouses Inc. (Applicant) v. Terry L. Johnston and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2187-11-ES: Legend Music Enterprises Corp. (Applicant) v. Michael J. Miller and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2216-11-ES: John E. Davis (Applicant) v. Parkview Excavation Services Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2236-11-ES: Semih Dursun (Applicant) v. 7313233 Canada Incorporated o/a Full House Restaurant and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2281-11-ES: Aditya Birla Minacs Worldwide Inc. o/a Aditya Birla Minacs (Applicant) v. Kathy Windsor and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2289-11-ES: Abby Gauthier (Applicant) v. Talisman Resort GP Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

2344-11-ES: Adelina Petrova (Applicant) v. Pinedale Properties Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

2352-11-ES: Robert W. McCallen operating as Restore North (Applicant) v. Christopher Russo, Director of Employment Standards (Respondent) *(Terminated)*

2440-11-ES: Vincent Puleio (Applicant) v. Moneris Solutions Corporation and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2479-11-ES: Shield Protection Services Ltd. (Applicant) v. Krystie Lynn Bray and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2492-11-ES: 1601661 Ontario Limited operating as April Fuels (Applicant) v. Aaron Peter Bertrand and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2494-11-ES: Family Ties operating as Friends & Family Restaurant (Applicant) v. Benjamin Brenner and (Respondent) *(Dismissed)*

2511-11-ES: 2041125 Ontario Limited o/a Tapps Cottage Eatery (Applicant) v. Amy Burkus and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2512-11-ES: 2041125 Ontario Limited o/a Tapps Cottage Eatery (Applicant) v. Zechariah Dunster and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2714-11-ES: Guiseppe Novello o/a Novello Desserts (Applicant) v. Christopher Gardner and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2723-11-ES: Imperial Hospitality Inc. o/a Hampton Inn & Suites (Applicant) v. Ashley Berndt and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2724-11-ES: Imperial Hospitality Inc. o/a Hampton Inn & Suites (Applicant) v. Carrie Tonkin and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2726-11-ES: B.S. & B. Auto Service Limited o/s BS & B Radiator Service (Applicant) v. Chris Dunn and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2851-11-ES: Nagui Khouzam (Applicant) v. Hudson's Bay Company / Compagnie de la Baie d'Hudson and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2885-11-ES: Robert B. Ford (Applicant) v. Ness Security Inc. o/a Ness Home Security Network and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2944-11-ES: Nicole A. Meyers (Applicant) v. Yonge Suites Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2973-11-ES: Arthur Brandon Denbesten (Applicant) v. Cameron Motorsports Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2977-11-ES: Marisa Cristini (Applicant) v. Ecco Shoes Canada, Inc. and, Director of Employment Standards (Respondent) *(Terminated)*

2999-11-ES: Joseph Tressler, a Director of Oil Screen - Reven North America Inc. 1767789 (Applicant) v. Amir Girgis and, Director of Employment Standards (Respondent) *(Granted)*

3044-11-ES: Richard Dabrowski (Applicant) v. Medical Crafters Incorporated and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3070-11-ES: Edgar Cruz (Applicant) v. Creekside Gardens Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3098-11-ES: Tim Hortons (Applicant) v. Marilyn Pearce and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3191-11-ES: Adbul Malik (Applicant) v. Big Inc. c/o Le Papillon on The Park and, Director of Employment Standards (Respondent) *(Withdrawn)*

3203-11-ES: Steven Hardy (Applicant) v. Cara Operations Limited/Enterprises Cara Limitee o/a Cara Limitee o/a Montana's and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3230-11-ES: Premier Medical Spa Inc. o/a Premier Medical Spa (Applicant) v. Kaitlan MacInnis and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3235-11-ES: Jack Larabie Distribution Inc. (Applicant) v. Denis Morin and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3236-11-ES: Dent Riddance Inc. (Applicant) v. Jamel Ghany, and Director of Employment Standards (Respondent) *(Dismissed)*

3241-11-ES: 2221614 Ontario Inc. operating as Pizza Pizza (Applicant) v. Ghulam Murtaza and, Director of Employment Standards (Respondent) *(Dismissed)*

3244-11-ES: Sandro DiClemente (Applicant) v. California Outdoor Kitchens Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3314-11-ES: 3461947 Canada Inc. o/a Courtyard By Marriott - Ottawa (Applicant) v. Lilia Kalamashvili and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3315-11-ES: 2243740 Ontario Inc. operating as Carisma (Applicant) v. Frank Bellissimo and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3320-11-ES: Tsuneaki Miyazawa (Applicant) v. 2125928 Ontario Limited Nota Bene Restaurant and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3325-11-ES: Karla Wint (Applicant) v. The Wawanesa Mutual Insurance Company and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3366-11-ES: Assunta Degli-Angeli (Applicant) v. Aurostar Inc. o/a Aurostar Paving and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3367-11-ES: Asbury Building Services Inc. (Applicant) v. Victor Cruz and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3374-11-ES: The Staffing Edge Inc. (Applicant) v. Marc Bomberry and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3388-11-ES: Services Vinci Park (Canada) Inc. (Applicant) v. Nicolas Gilles and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3390-11-ES: Clean Living Specialists Inc. (Applicant) v. Faye Kacht and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3403-11-ES: Lakeside Cape Inc. operating as Toronto Economical Management College (Applicant) v. Nangin Kuang and, Director of Employment Standards (Respondent) *(Terminated)*

3409-11-ES: 1574997 Ontario Inc. o/a 1574997 Ontario Inc (Vivi) (Applicant) v. Yun Qin Wang and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3410-11-ES: Camale Group Inc. o/a Crabby Joe's Tap & Grill (Applicant) v. Tyler Cumming and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3418-11-ES: Trinity Taxi and Livery Services Ltd. (Applicant) v. Graham Storms and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3478-11-ES: Li Yue (Applicant) v. K-Bro Linen Systems Inc. and, Director Of Employment Standards (Respondent) *(Dismissed)*

3486-11-ES: Blu Skye Health Inc. o/a Healthwithcare (Applicant) v. Darshita Patel and, Director of Employment Standards (Respondent) *(Dismissed)*

3487-11-ES: Blu Skye Health Inc. o/a Healthwithcare (Applicant) v. Jane Lee and, Director of Employment Standards (Respondent) *(Dismissed)*

3506-11-ES: Rod Macleod o/a The Lunch Box (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3534-11-ES: Three Bridges Banquet Hall (Applicant) v. Robert Sproat, and Director of Employment Standards (Respondent) *(Withdrawn)*

3548-11-ES: Stephen V Djurich (Applicant) v. PFS Fence Inc. / Bramalea Fence Ltd. and, Director of Employment Standards (Respondent) *(Terminated)*

3562-11-ES: Blu Skye Health Inc. o/a Healthwithcare (Applicant) v. Connie Guido and, Director of Employment Standards (Respondent) *(Dismissed)*

3563-11-ES: Blu Skye Health Inc. o/a Healthwithcare (Applicant) v. Dinna Icatar and, Director of Employment Standards (Respondent) *(Dismissed)*

3628-11-ES: Top Notch Services (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

3650-11-ES: Amherst Mouldings Inc (Applicant) v. Jeremy Gowing and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3680-11-ES: Lian Zhong Chen (Applicant) v. Synergy Enterprises Group Inc., and Director of Employment Standards (Respondent) *(Withdrawn)*

3695-11-ES: Katy Flanjak o/a Ice Cream 2 (Applicant) v. Shayna Eckert and, Director of Employment Standards (Respondent) *(Dismissed)*

3696-11-ES: Katy Flanjak o/a Ice Cream 2 (Applicant) v. Taylor Straicher and, Director of Employment Standards (Respondent) *(Dismissed)*

3697-11-ES: Meubles Hawkesbury Furniture Inc. (Applicant) v. Lise M. Sabourin and, Director of Employment Standards (Respondent) *(Terminated)*

3713-11-ES: Hamid Reza Kaywandarian & Mahanaz Reyhani operating as Renokay (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

3715-11-ES: VE Collective Inc. (Applicant) v. Xian Feng Zhou and, Director of Employment Standards (Respondent) *(Terminated)*

3731-11-ES: Bethina Holdings Ltd. (Applicant) v. Anne Hatfield and, Director of Employment Standards (Respondent) *(Dismissed)*

3864-11-ES: Mohammad Farhan Chaudhary (Applicant) v. Phidel Inc. o/a Phidel Restaurants Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

0602-10-HS: Elementary Teachers' Federation of Ontario (Applicant) v. Glengarda Child and Family Services and, Rick Taggart, Inspector (Respondent) v. Greater Essex County District School Board (Intervener) *(Terminated)*

1306-11-HS: Canadian Union of Public Employees (Applicant) v. The Regional Municipality Durham, David Fung, Inspector (Respondent) *(Withdrawn)*

2642-11-HS: IBEW Local 530 (Applicant) v. Gil & Sons Limited and, Fil Savoia, Regional Director (Respondent) v. First Solar Development (Canada) Inc. (Intervener) *(Dismissed)*

3183-11-HS: Procon Niagara (Applicant) v. IBEW Local 303 and, Stephen Dama, Inspector (Respondent) *(Withdrawn)*

3932-11-HS: Twin Lakes Terrace Retirement Living (Applicant) v. Beth Netherscott, Inspector (Respondent) *(Withdrawn)*

EMPLOYEE STATUS

0624-11-M: Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newsmedia Guild) (Applicant) v. World Journal (Daily) News Inc. (Respondent) *(Withdrawn)*

PAY EQUITY ACT

1675-11-PE: Alexander Rogovik (Applicant) v. St. Michael's Hospital (Respondent) *(Dismissed)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

1444-09-PS: Ontario Nurses' Association (Applicant) v. Pembroke Regional Hospital, Marianhill Inc. (Respondent) v. Canadian Union of Public Employees - Local 3721 (Intervener) *(Withdrawn)*

0266-11-PS: Ontario Nurses' Association (Applicant) v. London Health Sciences Centre, St. Joseph's Health Care London (Respondent) v. OPSEU Local 152 (Intervener) *(Withdrawn)*

0326-11-PS: Ontario Nurses' Association (Applicant) v. Hopital Regional de Sudbury Regional Hospital and, St. Gabriel's Villa of Sudbury (Respondent) v. Ontario Public Service Employees Union, The Canadian Union of Public Employees and its Locals 1623-00 and 1623-01 (Intervener) *(Withdrawn)*

SECTOR DETERMINATION (SECTION 153)

1152-02-M: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America and, Metal Tech Systems Inc. (Respondent) v. Labourers' International Union of North America,, Toronto - Central Ontario Building and Construction Trades Council, Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America, 870528 Ontario Ltd. o/a Lido Construction Company (Intervener) *(Dismissed)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

3065-10-U: Tiziano Scotta (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

3066-10-U: Tiziano Scotta (Applicant) v. Toronto Transit Commission (Respondent) *(Dismissed)*

0364-11-OH: Daniel Parsons (Applicant) v. Simcoe County District School Board and, Ontario Secondary School Teacher's Federation (Respondent) *(Dismissed)*

0422-11-U: Daniel Parsons (Applicant) v. Ontario Secondary School Teacher's Federation (Respondent) v. Simcoe County District School Board (Intervener) *(Dismissed)*

1702-11-ES: BRT Precision Gun Drills North America Ltd and Nova International Machine and Tool Company Limited (Applicant) v. Bob P. Turosky and, Director of Employment Standards (Respondent) *(Terminated)*

3074-11-OH: Shari Petro (Applicant) v. The Beer Store (Respondent) *(Dismissed)*

3608-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Brandy Lane Homes and Mountain Trails Development Corporation (Respondent) *(Dismissed)*

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